179
CLERK'S COPY. 402 909 Sup Ct

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 20

MILK WAGON DRIVERS UNION, LOCAL 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, ET AL., PETITIONERS,

vs.

LAKE VALLEY FARM PRODUCTS, INC., AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION No. 819, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 28, 1940.

CERTIORARI GRANTED APRIL 1, 1940.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1939.

No. .....

MILK WAGON DRIVERS' UNION, LOCAL 753, ET AL.,
Petitioners,

vs.

LAKE VALLEY FARM PRODUCTS, INC., A CORPORATION; LAKE VIEW COOPERATIVE OF WATERTOWN, WISCONSIN, ETC., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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IN THE

United States Circuit Court of Appeals

For the Second Circuit

No. 5506

LAKE VALLEY FARM PRODUCTS, INC., a corporation, et al.,

vs.

LAKE VIEW FARMERS' CO-OPERATIVE CREAMERY, WISCONSIN, etc., et al.,

Plaintiffs-Appellants,

vs.

MAK-WAHON DISTRICT UNION, LOCAL 754, et al.,

Defendants-Appellees.

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 6900

LAKE VALLEY FARM PRODUCTS, INC., A CORPORATION; LAKE VIEW COOPERATIVE OF WATERTOWN, WISCONSIN, ETC., ET AL.,

Plaintiffs-Appellants,

vs.

MILK WAGON DRIVERS' UNION, LOCAL 753, ET AL.,

Defendants-Appellees.

Counsel for Plaintiffs-Appellants:
MR. ARTHUR R. SEELIG.

Counsel for Defendants-Appellees:
MR. DAVID A. RISKIND,
MR. ABRAHAM W. BRUSSELL.

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1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable Philip L. Sullivan, District Judge of the United States for the Northern District of Illinois on the fifteenth day of December, in the year of our Lord one thousand nine hundred and thirty-eight, being one of the days of the regular November Term of said Court, begun Monday, the seventh day of November, and of our Independence the one hundred sixty-third year. Placita.

Present:

Honorable Philip L. Sullivan, District Judge.
William H. McDonnell, U. S. Marshal.
Henry W. Freeman, Clerk.

Filed May 21, 1938.

2 IN THE DISTRICT COURT OF THE UNITED STATES.

Northern District of Illinois, Eastern Division.

Lake Valley Farm Products, Inc., a corporation; Amalgamated Dairy Workers Local, Industrial Union No. 819, a voluntary unincorporated Association; Josef Wagner, doing business as Wagner Dairy Products; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin,

Plaintiffs,

vs.

Milk Wagon Drivers Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards, and Joseph L. Patterson,

Defendants.

In Equity No. 16073.

Be It Remembered, that the above-entitled action was commenced by the filing of the following Bill of Complaint with Exhibit attached in the above-entitled cause, in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the twenty-first day of May, 1938.

3 DISTRICT COURT OF THE UNITED STATES OF AMERICA.

* * (Caption 16073) * *

BILL OF COMPLAINT.

To the Honorable, the Judges of Said District Court, in Chancery Sitting:

The Plaintiffs, Lake Valley Farm Products, Inc., a corporation, Amalgamated Dairy Workers, Local Industrial Union, No. 819, a voluntary unincorporated association; Josef Wagner doing business as Wagner Dairy Products; Lake View Cooperative of Watertown, Wisconsin, an agri-

cultural cooperative corporation of the State of Wis-
4 consin, file this their Bill of Complaint, against Milk Wagon Drivers Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association, with its principal office and place of business in the City of Chicago, County of Cook and State of Illinois; Robert G. Fitchie, both individually and in his representative and official capacity as hereinafter more fully described, a citizen and resident of the State of Illinois, residing in the City of Chicago and County of Cook thereof; James Kennedy, both individually and in his representative and official capacity as hereinafter more fully described, a citizen and resident of the State of Illinois, residing in the City of Chicago, and County of Cook thereof; Steve Sumner, both individually and in his representative and official capacity as hereinafter more fully described, a citizen and resident of the State of Illinois, residing in the City of Chicago and County of Cook thereof; Fred C. Dahms, both individually and in his representative and official capacity as hereinafter more fully described, a citizen and resident of the State of Illinois, residing in the City of Chicago, and County of Cook thereof; F. Ray Bryant, both individually and in his representative and official capacity as hereinafter more fully described, a citizen and resident of the State of Illinois, residing in the City of Chicago and County of Cook thereof; Alvin F. Richards, both individually and in his representative and official capacity as hereinafter more fully described, a citizen and resident of the State of Illinois, residing in the City of
5 Chicago, and County of Cook thereof; Joseph L. Patterson, both individually and in his representative and official capacity as hereinafter more fully described, a citizen and resident of the State of Illinois, residing in the City of Chicago, and County of Cook thereof; and certain unknown persons whose names, citizenship and place of residence is unknown, and allege the following:

First: The Plaintiff, Lake Valley Farm Products, Inc., is a corporation duly organized under and existing by virtue of the Laws of the State of Illinois, with its principal office and place of business in the City of Chicago, County of Cook and State of Illinois, within the said Division and District aforesaid.

Second: The Plaintiff, Amalgamated Dairy Workers Local Industrial Union No. 819, is a voluntary unincorporated association at common law of a large number of persons (hereinafter for convenience referred to as Plaintiff Union) all of whom are citizens and residents of the Divi-

sion and District aforesaid; that said Plaintiff Union mantains its executive office in the City of Chicago, County of Cook and State of Illinois, and within the Division and District aforesaid.

Third: The Plaintiff, Josef Wagner, is a citizen and resident of the State of Illinois, residing in the Town of Cicero, in the County of Cook thereof, within the said Division and District aforesaid.

6 Fourth: The Plaintiff, Lake View Cooperative, is an agricultural cooperative non-stock corporation, organized under and existing by virtue of the Laws of the State of Wisconsin, relating to the organization of agricultural cooperative corporations, with its principal office and place of business in the Town of Watertown, County of Jefferson and State of Wisconsin.

Fifth: The Defendant, Milk Wagon Drivers Union of Chicago, Local 753, (hereinafter for convenience referred to as Defendant Union) is a voluntary unincorporated association at common law, the members of which are citizens and residents of the Division and District aforesaid; said Defendant Union maintains its office and conducts its affairs in the City of Chicago, County of Cook and State of Illinois, within the said Division and District aforesaid.

Sixth: The Defendant, Robert G. Fitchie, is a citizen and resident of the City of Chicago, County of Cook and State of Illinois, and is the duly elected, qualified and acting President of and for the Defendant Union.

Seventh: The Defendant, James Kennedy, is a citizen and resident of the City of Chicago, County of Cook and State of Illinois and is duly elected, qualified and acting Vice-President and one of the Business Agents of and for the Defendant Union.

7 Eighth: The Defendant, Steve Sumner, is a citizen and resident of the City of Chicago, County of Cook and State of Illinois and is the duly elected, qualified and acting Secretary of and for the Defendant Union.

Ninth: The Defendant, F. Ray Bryant, is a citizen and resident of the City of Chicago, County of Cook and State of Illinois, and is one of the duly elected, qualified and acting Business Agents of and for the Defendant Union.

Tenth: The Defendant, Alvin C. Richards, is a citizen and resident of the City of Chicago, County of Cook and State of Illinois, and is one of the duly appointed, qualified and acting Business Agents of and for the Defendant Union.

Eleventh: The Defendant, Joseph L. Patterson, is a citizen and resident of the City of Chicago, County of Cook

and State of Illinois, and is the duly elected, qualified and acting Treasurer of and for the Defendant Union.

Twelfth: The Defendant, Fred C. Dahms, is a citizen and resident of the City of Chicago, County of Cook and State of Illinois, and is the duly elected, qualified and acting Recording Secretary of and for the Defendant Union.

8 Thirteenth: This Complaint is a suit of a civil nature in Equity, which arises out of the Laws of the United States enacted to give protection to trade and commerce and against restraints and monopolies, being "An Act To Protect Trade and Commerce Against Unlawful Restraints and Monopolies" approved July 2, 1890, 15 U. S. C. A. Sections 1 to 7, and commonly known as the Sherman Anti-Trust Act, and "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and For other Purposes" approved October 15, 1914, 15 U. S. C. A. Sections 12 to 27, commonly known as the Clayton Act; and prays that the Court in granting complete relief to the Plaintiffs herein adjudicate and determine the rights of the Plaintiffs under and by virtue of a certain Statute of the State of Illinois entitled "An Act Approved June 28, 1919, Amending the Conspiracy Act of March 27, 1874, (Chapter 38, Section 139, Smith-Hurd Illinois Revised Statutes 1937), and further adjudicate and determine the rights of the Plaintiffs under Section 19 of the United States Criminal Code (18 U. S. C. A. Section 51), which provides, in part, as follows:

"That if two or more persons conspire to injure, oppress, threaten or intimidate any person in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or the Laws of the United States * * * shall be fined, etc."

and to fully adjudicate and protect the rights of the Plaintiffs under other Laws of the United States applicable to the facts herein.

9 Fourteenth: Jurisdiction of the Court is further invoked by virtue of the diverse citizenship of the parties Plaintiff and Defendant herein, under the provisions of Section 41 (1) of the Judicial Code of the United States, (28 U. S. C. A.)

Fifteenth: The Plaintiff, Lake Valley Farm Products, Inc., is now and for more than three years last past continuously prior to the filing of this Bill of Complaint, has been engaged in the business of processing and distributing milk and dairy products in the City of Chicago and its environs; that its pasteurizing plant is located at 5330 South

Western Avenue in the City of Chicago, Illinois, and that said plant contains machinery, fixtures, equipment and other apparatus necessary to the handling, pasteurizing, bottling and all other necessary processes in connection with such business; that the said corporation has a large investment in its said dairy equipment and in the delivery equipment necessary to the distribution thereof; that approximately ninety persons are employed in such plant in connection with the processing and handling of said milk and dairy products and in the distribution of its products to the various outlets therefor; that in the conduct of its said business, this Plaintiff receives more than one million pounds of fluid milk monthly; that during the period that said Plaintiff has been engaged in said business, it has established a valuable good will, in that large numbers of the milk consuming
10 public of the City of Chicago and its environs desire to purchase and do purchase their milk product requirements of and from persons selling the products to this Plaintiff as hereinafter more specifically described; that said Plaintiff has at all times enjoyed satisfactory relationships with the purchasing public and has established a reputation for the satisfactory quality of its products and has, because of said reputation, created said good will, which good will and the ability to continue to serve said public is of great value and worth to this Plaintiff; that said property and said established business of this Plaintiff is the value of approximately Two Hundred Thousand Dollars ($200,000.00).

Sixteenth: The Plaintiff, Josef Wagner, is now and for more than twenty-five years last past continuously prior to the filing of this Bill of Complaint, has been engaged in the business of processing and distributing milk and dairy products in the City of Chicago and its environs; that its pasteurizing plant is located at 5407 West 24th Street, in the Town of Cicero, Illinois, and that said plant contains machinery, fixtures, equipment and other apparatus necessary to the handling, pasteurizing, bottling and all other necessary processes in connection with said business; that the Plaintiff, Josef Wagner, has a large investment in said dairy equipment and in the delivery equipment necessary to the distribution thereof; that approximately twenty-
11 four persons are employed in such plant in connection with the processing and handling of said milk and dairy products and in the distribution of such products to the various outlets therefor; that in the conduct of said business, this Plaintiff receives more than one-half million pounds of fluid milk monthly; that du[illegible]g the period that

said Plaintiff has been engaged in said business, he has established a valuable good will, in that large numbers of the milk consuming public of the City of Chicago and environs desire to purchase and do purchase their milk product requirements of and from persons selling the products of this Planitiff as hereinafter more specifically described; that this Plaintiff has at all times enjoyed satisfactory relationships with the purchasing public and has established a reputation for the satisfactory quality of his products and has, because of said reputation, created said good will, which good will and the ability to continue to serve said public is of great value and worth to this Plaintiff; that said property and said established business of this Plaintiff is the value of approximately Fifty Thousand Dollars ($50.000.00).

Seventeenth: The Plaintiff, Amalgamated Dairy Workers Local Industrial Union No. 819, is an unincorporated association at common law of natural persons chartered by the Committee for Industrial Organization, its parent union, for the purpose of organization and collective representation of workers engaged in the dairy industry;
12 that said Plaintiff Union maintains its executive office and transacts its business and affairs at and in the City of Chicago, in the County of Cook and State of Illinois; that in furtherance of its purposes, said Plaintiff Union has organized divers dairy workers in the City of Chicago, among said workers being the workers employed by, and processing, handling and distributing the products of, the Plaintiffs, Lake Valley Farm Products, Inc., and said Wagner Dairy Products.

Eighteenth: That for the purpose of avoiding industrial strife, burdening or obstructing interstate commerce, and for the purpose of granting to workers full freedom of association and organization and designation of representatives of their own choosing to negotiate the terms and conditions of employment, the Congress of the United States has enacted a certain law commonly known as the "Wagner Labor Relations Act", Title 29 U. S. C. A. Sections 151 to 166, wherein the public policy of the United States is declared to be as follows:

"Section 1. * * * It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and desig-

nation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

13 Nineteenth: The said Plaintiff Union has been designated by its said members as their sole representative for the purpose of collective bargaining with their respective employers, including the Plaintiff Dairies herein, and that pursuant to such designation as sole representative for collective bargaining, the Plaintiff Union has exacted from the Plaintiff Dairies agreements in writing under the terms of which agreements said dairies agree that they will recognize the Plaintiff Union as the sole representative of their workers for the purpose of collective bargaining; that all matters concerning wages and terms and conditions of employment will be determined by mutual agreement between said Plaintiff Union and said Plaintiff Dairies, and that in the event of the inability to agree upon any such matters as may hereafter be in controversy, that such matters will be submitted to and decided by arbitration; that the interests of the members of Plaintiff Union in and to their respective jobs and the security and permanence thereof, and their right to the protection and assurance thereof by means of union organization and the designation of their representative for the purpose of collective bargaining, and the right of the Plaintiff Union to act as the selected and accepted exclusive bargaining agent of its said members is a valuable property right of great value to the said Plaintiff Union and to its respective members; that said right is such a right as is sought to be protected under the Constitution and Laws of the United

14 States.

Twentieth: That this suit, among other things, asks that the Court grant unto the Plaintiff Union and its members the full protection of the Laws of the United States to the end that the said right of organization and collective representation for the purpose of avoiding industrial strife may be carried out and given effect, and that the valuable rights of the Plaintiff Union and its members therein may not be so unlawfully threatened and endangered, and interstate commerce burdened and obstructed thereby, in the manner as hereinafter specifically set forth.

Twenty-first: That the Plaintiff, Lake Valley Farm Products, Inc., receives its daily requirements of fluid milk of and from the Plaintiff, Lake View Cooperative, which maintains a country receiving plant or station at the Town of Watertown in the State of Wisconsin; that said plant receives said fluid milk from farmer producers whose farms

are located adjacent to the said country plant, all of which farms are situated in, and which farmers are residents and citizens of the said State of Wisconsin; that said farmer producers deliver said milk to said country plant where the same is collected, and on the same day and shortly thereafter, placed in and transported by motor trucks over the public highways and in and as a part of the stream of interstate commerce from the said State of Wisconsin
15 into and in the State of Illinois, and to the dairy plant of the said Plaintiff, Lake Valley Farm Products, Inc., in the City of Chicago, County of Cook and State of Illinois, aforesaid.

Twenty-second: That the Plaintiff, Josef Wagner, receives the fluid milk supply daily necessary to the conduct of his business of and from the Richmond Milk Plant maintained and operated at the Town of Richmond in the County of Cook and State of Illinois; that said dairy plant is situated but a few miles from the boundary of the State of Illinois with the State of Wisconsin; that said Richmond Milk Plant receives said fluid milk from farmer producers, whose farms are located adjacent to said milk plant, many of which farms are situated in the State of Wisconsin; that said farmer producers deliver said milk on the day of its production to said Richmond Dairy Plant, including those farmer producers whose farms are situated in the State of Wisconsin, and who bring said milk from the State of Wisconsin at the point of its production to said Richmond Milk Plant; that said milk so received is collected and on the same day and shortly thereafter transported by motor truck along and upon the public highways of the State of Wisconsin, in the stream of interstate commerce to the dairy plant of the Plaintiff, Josef Wagner, in the Town of Cicero, and State of Illinois, aforesaid.

16 Twenty-third: That the Plaintiff, Lake View Cooperative receives the fluid milk that it sells to Plaintiff, Lake Valley Farm Products, Inc., from its constituent members, such members being the owners of dairy farms located adjacent to the country receiving plant or station of the Plaintiff, Lake View Cooperative, at Watertown, in the State of Wisconsin; that said farmer producers are residents and citizens of the State of Wisconsin; that the milk produced by said farmer producers is brought to said receiving station daily, on the day of its production and after the same is cooled and collected is on the same day and shortly thereafter, placed in and transported by motor trucks over the public highways and in and as a part of the stream of interstate commerce, from the said State of

Wisconsin and into and in the State of Illinois, to the dairy plant of the Plaintiff, Lake Valley Farm Products, Inc. in the City of Chicago, in the State of Illinois, aforesaid, and elsewhere; that the milk so collected at the country receiving station at Watertown, Wisconsin for shipment to the Plaintiff, Lake Valley Farm Products, Inc., is indistinguishable from milk received for and sold to other dairies, in that milk for all dairies is commonly collected and intermingled and the amounts needed are measured by quantity from the entire amount received.

17 Twenty-fourth: That said fluid milk so purchased by the Plaintiff Dairies herein, and so sold by the Plaintiff, Lake View Cooperative, is transported daily by said Dairies and said Cooperative into the State of Illinois, and that in the transportation of said fluid milk into and in the State of Illinois the same is intermingled inextricably with other milk in interstate commerce destined for the City of Chicago, Illinois, and becomes a part of the steady flow and stream of interstate commerce in milk for other dairies situated in and distributing milk and other dairy products in the said City of Chicago, and is inextricably intermingled and an integral part of the steady flow and stream of other articles of commerce and trade in interstate commerce destined for the City of Chicago, Illinois; that an amount in excess of 40% of all of the milk sold as whole milk in the City of Chicago and its environs, is produced at sources outside of the State of Illinois and is transported in interstate commerce into the State of Illinois, and an amount in excess of 75% of the cream sold in said Chicago and its environs is manufactured from milk produced outside of the State of Illinois; that milk and cream produced outside of the State of Illinois and sold in the said City of Chicago and its environs by divers other dairies there situated, is sold in direct competition with the milk and cream sold by the Plaintiff Dairies; that the conduct of the businesses of the Plaintiff Dairies and the transportation of the said fluid milk to said dairies constitutes a large and im-

18 portant continuous course of business conducted in the stream of interstate commerce among the several states of the United States of America, as the term is defined and employed in the Laws of the United States, and particularly as used and employed in the Laws hereinabove referred to in paragraph "Thirteenth" hereof.

Twenty-fifth: That the Plaintiff Dairies, in the conduct of their said businesses, daily purchased cream from persons dealing in the same, and that practically all of the milk used in the production of said cream is produced in states

other than the State of Illinois, and that said milk so used in producing said cream, and said cream, is transported in interstate commerce and the same is part of the flow of interstate commerce and a part of the trade and commerce conducted in the continuous flow of said interstate commerce.

Twenty-sixth: That the Plaintiff Dairies, in the conduct of their said businesses, receive the said fluid milk daily, as aforesaid, and immediately thereafter, pasteurize and bottle the same; that said pasteurizing and bottling requires a very short period of time, and the milk so received is distributed in the manner hereinafter set forth, on the same day as received and within a few hours thereof; that Plaintiff Dairies distribute a portion of said bottled milk and cream to various business establishments situated in the City of Chicago and its surroundings, such business establishments being in the nature of milk stores, grocery stores, delicatessens, food stores and other retail establishments where the same is sold at retail to the ultimate consumer thereof; that said bottled milk and cream is distributed from the said Plaintiff Dairy by motor trucks, being the property of said Plaintiff Dairy operated by drivers who are employed by said Plaintiff Dairy and who are members of the Plaintiff Union herein; that a portion of said bottled milk and cream of said Plaintiff Dairies is sold to various persons who own and operate automobile truck equipment, who pick up said bottled milk and cream at the pasteurizing plant of said Dairy, and thereafter distribute the same to various milk and food stores of the nature and kind as hereinabove referred to; that said persons so operating said delivery truck equipment are of a class commonly known and referred to as "vendors"; that said Plaintiff Dairy, in connection with said sales to such vendors, delivers no part of said milk to the ultimate consumer thereof but that its transactions in connection therewith terminates with the sale to said vendors; that in addition thereto, said Plaintiff Dairies sell a part of their said bottled milk and cream to persons, as hereinbefore designated as vendors, which vendors deliver and distribute said bottled milk and cream directly to the homes of household consumers thereof.

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20 Twenty-seventh: That milk distribution in the City of Chicago consists principally of two methods, the same being either delivered directly to the home of the ultimate consumer, or sold at various retail establishments in the nature of milk stores, grocery stores, delicatessens

and other food stores, at which stores the consumer calls and purchases said milk or cream, paying cash therefor, and carrying the same to his or her respective home; that in the City of Chicago, at the date of the filing of this Bill of Complaint, there are approximately twenty-six hundred (2600) of such stores selling milk upon a cash and carry basis; that approximately five hundred twenty (520) of said retail stores situated in the City of Chicago sell the bottled milk and cream of the Plaintiff Dairies herein, and that the remainder of such stores distribute milk and cream pasteurized and bottled by other dairies operating and conducting their businesses in a manner similar to that of the Plaintiff Dairies; that by virtue of the fact that many less stops per route are required to deliver a similar quantity of milk, the cost of distribution to the said Plaintiff Dairies or to the vendors distributing the milk of said Plaintiff Dairies to said milk stores, is very much less than the cost necessarily incurred in delivering milk directly to the home of the consumer, a practice has grown up and is now prevalent in the City of Chicago of selling said bottled milk and cream in said milk stores at prices less than that
21 charged for milk delivered directly to the home of the consumer; that the difference in the cost of delivery between the two types of distribution is approximately three cents for each quart of milk; that by means of distribution through such milk stores, it has been possible to furnish the milk consuming public with said products at a considerable saving, and due to the public necessity therefor and the inherent validity of the method of distribution, the demand for said milk has developed so that at the present time approximately 40% of all of the milk and cream sold in the City of Chicago is distributed by sale at such milk stores; that because of the fact that said milk has been and is being sold at a considerable saving, the Plaintiff Dairies and other dairies selling to said milk stores or depots have been termed and now are referred to as "cut rate dairies."

Twenty-eighth: That the great majority of said twenty-six hundred (2600) cash and carry milk stores situated and operating in the City of Chicago are in the nature of grocery stores, delicatessens, food stores and similar establishments which, in addition to milk and cream, sell complete lines of food products of a nature and kind usually sold by similar establishments; that said retail establishments are owned by various individuals, and that the Plaintiff Dairies do not own any retail milk stores and are not interested

in any way in the ownership of any of said stores; that
22 the aggregate investment of the owners of said retail establishments is estimated to be several millions of dollars; that in connection with the conduct of said independent retail food stores, it is necessary that various other products in the nature of bread, cheese, meat, sausage, canned goods, ice cream, bakery goods and other items and articles sold by said establishments be delivered to said stores by various persons; that said food stores are, in most cases, owned by an individual, who personally conducts the affairs thereof and who employs a very small number of employees; that because of the nature of the business conducted by said independent food stores, and the ownership thereof, and the same not being workers in the dairy industry, they are not amenable to organization by the Plaintiff Union, and by virtue of the fact that none of said persons so engaged are milk wagon drivers, none of said persons are amenable to organization by or membership in the Defendant Union, herein.

Twenty-ninth: That the vendors so distributing the products of the Plaintiff Dairies, as hereinbefore described, by virtue of the fact that they are independent contractors and as such operate their own business were, at no time, subject to organization or acceptable to membership in the Defendant Union.

23 Thirtieth: That the Defendant Union is a "craft" union, that is to say, a union which accepts for membership only those persons employed in a particular craft or performing a particular type of work; that as the name of the Defendant Union implies, it is a union for and accepts for memberships, only persons employed as milk wagon drivers; that the owners of the independent milk stores herein referred to and the vendors distributing the products of Plaintiff Dairies and other cut-rate dairies, are not milk wagon drivers, are not employees, do not receive a fixed salary, and are not acceptable to membership in Defendant Union.

Thirty-first: That the Plaintiff Union is an "industrial" union, that is to say, a union to which all members engaged in a given industry, regardless of the work performed, are acceptable for membership; that the plaintiff Union is a union for, and accepts for membership, all workers in the dairy industry, whether such persons are inside workers, milk wagon drivers, vendors or any other classification of worker.

Thirty-second: That the members of the Defendant Union are and have been in the employ of various dairy

establishments operating in the City of Chicago, in direct competition with the operations and business of the Plaintiff Dairies and other cut-rate dairies; that these dairies employing as milk wagon drivers, the members of De-
24 fendant Union, distribute bottled milk and cream directly to the homes of the ultimate consumer; that among said dairies are the following: Bowman Dairy Company, Borden-Wieland Division of the Borden Co., Sidney Wanzer & Sons, Capitol Dairy Co., Western-United Dairy Company, and various other dairies; that the said dairies herein in this Paragraph enumerated, employing members of the Defendant Union are very large dairies and have a combined capitalization in excess of one hundred million dollars; that all of said large dairies in this paragraph enumerated own and operate delivery equipment in the nature of motor vehicles and horse drawn wagons for the purpose of delivering bottled milk and cream in house to house delivery, directly to the home of householders in and about the City of Chicago; that all of said dairies in this paragraph enumerated and many other dairies, more than one hundred in number, operating pasteurizing plants in the City of Chicago, employing members of the Defendant Union, purchase large quantities of fluid milk produced in and transported from States other than the State of Illinois, to-wit: approximately 40% of their requirements, and purchase large quantities of cream produced from milk originating in States other than the State of Illinois. to-wit: approximately 75% thereof; that said fluid milk is pro-
duced in the States of Wisconsin, Indiana, Michigan
25 and other States, and after the production thereof is transported by railroad, automobile trucks, and other methods of transportation along and upon the highways of the said various States and into and in the State of Illinois, all occurring in and a part of the steady flow and stream of interstate commerce; that the transportation of said milk and the pasteurizing and distribution thereof all occur within and are a part of the continuous and uninterrupted stream of interstate commerce; that the said interstate commerce in said milk industry constitutes a very large proportion of all of the commerce coming into the City of Chicago, by reason of the fact that milk is of a perishable nature and must be transported daily, and by reason of the fact that it is the largest agricultural product determined by volume and value; that any act or acts in any way burdening, affecting, limiting or restricting the sale and distribution of milk in the City of Chicago, threat-

ens, burdens and directly affects limits and restricts interstate commerce.

Thirty-third: That the dairies in the City of Chicago employing members of the Defendant Union distribute a majority of all of the milk distributed in the City of Chicago, and constitute a monopoly of the distribution of milk in said City directly affecting interstate commerce; that the said Defendant Union, despite the economic justification, public demand therefor, and the inherent validity and efficiency of the cut-rate method of distribution and its attendant large savings to the public, by virtue of the
26 unlawful conspiracy, confederacy, combination and agreement as hereinafter more particularly described, have sought to maintain an artificial price of milk in the City of Chicago, and have sought to prevent the Plaintiff Dairies and other independent cut-rate dairies from distributing milk at a reasonable price; that said Defendants conspiring among themselves and with divers other persons have attempted to regulate and control the retail price of milk in the City of Chicago, and the manner and method of distribution thereof, which things the Plaintiffs say are not within the lawful perview of Defendant Union's activities, but on the contrary are wholly wrongful and illegal; that the actions of Defendant Union in its attempt to prevent the distribution of cut-rate milk and its attempt to determine and control the retail price of milk has been evidenced and sought to be effected by and has resulted in a continuing state of terror, lawlessness, violence, intimidation and other unlawful and illegal acts in the City of Chicago; that the independent stores selling cut-rate milk for the period of the past several years have been bombed, destroyed by fire, the plate glass windows thereof have been smashed, stench bombs have been thrown into the same, customers have been intimidated and threatened, owners and clerks working in said stores have been threatened and assaulted, ingress to said stores by customers has been prevented, delivery of food stuffs and other necessary commodities into said stores has been prevented; patrons of such stores have been insulted, threatened and otherwise abused,
27 and other unlawful and criminal acts have been committed; that said acts of violence still continue, and that by virtue thereof a present state of terror exists in the City of Chicago, the purpose and effect of which is to threaten and intimidate the public and create in them a fear which will prevent them from patronizing the said independent milk stores distributing milk of the Plaintiff Dairies and other cut-rate dairies, to the end that they

may be eliminated, their competition stifled, a monopoly created, and interstate commerce restricted and limited; all of which acts the Plaintiffs say are unlawful and contrary to the Laws of the United States and the Constitution thereof and obstructing and burdening interstate commerce.

Thirty-fourth: That in addition thereto, the Defendant Union, in order to carry out and give effect to the said unlawful conspiracy, confederacy, combination and agreement, has caused certain of its members to patrol back and forth in front of the independent milk stores selling milk bottled by Plaintiff Dairies, carrying a placard or banner having inscribed thereon, the legend:

"This Milk Store is Unfair to Milk Wagon Drivers Union, Local 753, I. B. T. affiliated with the A. F. of L."

That said picketing in many instances (and as more specifically hereinafter set forth) has commenced after threats by members and agents of the Defendant Union, that the same would commence unless milk were purchased from
28 certain named dairies selling at higher prices and after various other threats, intimidations and acts of violence; that said pickets in addition to patrolling in front of said stores have and do annoy, argue with, jeer, direct foul language at, intimidate and threaten customers and potential customers of said independent milk stores and do interfere and prevent the orderly conduct of the business of said stores; that said pickets do argue with, threaten and prevent persons making deliveries to said stores and do block and prevent entrance into said stores.

Thirty-fifth: That the said picketing of said stores by said Defendant Union is not peaceful picketing, pursuant to a legitimate labor dispute, for the reason that the businesses of said independent milk stores as hereinabove stated are not amenable to organization and their employees are not acceptable to membership in the Defendant Union; that said stores are not involved in any labor dispute of any kind or nature; that said picketing is and constitutes a secondary boycott in unlawful restraint of trade as defined by the Laws of the United States appertaining thereto, for the reason that the said picketing is not for the purpose of giving publicity to a labor dispute, as no labor dispute exists; because the statement upon said placard or banner is untrue and fraudulent for the reason that said store is not an employer of labor capable of membership in either Plaintiff or Defendant Union; for the reason that the statement contained upon said placard or banner does not pre-

sent the whole story, but seeks by fraudulent statement
29 and concealment of actual facts to unlawfully prevent
persons from trading with said store; because said picketing has been accompanied by threats of force, intimidation and violence; because the end to be achieved to-wit: a monopoly in restraint of interstate trade and commerce is illegal, and therefore all acts in pursuance thereof are illegal; that by virtue of the number of milk stores in the City of Chicago, and the number of pickets committing the aforesaid acts at or near the same, the same constitutes a general threat to all of the members of the public of the City of Chicago, and creates a special public interest therein; that it is impossible for the public authorities charged with the duty to protect the same, to provide sufficient policemen and other agents of the State to patrol all of the streets of the City of Chicago, and to prevent the unlawful and violent acts hereinbefore and hereinafter set out.

Thirty-sixth: That in addition thereto and under the pretext of giving publicity to a labor dispute, the Defendant Union has caused to be distributed wide-spread among the people of Chicago a certain folder or document, photostatic copy of which is hereto attached and identified as Exhibit "A"; that said pamphlet lists the names of the Plaintiff Dairies, together with the names of certain other independent cut-rate dairies designating the same as "Non-Union Dairies as of January 25, 1938"; that the statements therein contained and the method of presentation
30 are so arranged as to work a fraud upon the members
of the public reading the same, and to present a fraudulent and untrue picture of the cut-rate milk situation; that the picture of various milk depots appearing upon said circular are pictures of milk stands selling bulk milk, and that all of said depots so pictured are situated outside of the City of Chicago; that the Health Department of the City of Chicago does not permit the sale of bulk milk and cream within its territorial limits; that by listing the names of the Plaintiff Dairies upon said circular together with photographs of said bulk milk States is an insinuation that the Plaintiff Dairies distribute their milk in the City of Chicago in this manner; that Plaintiff Dairies do not distribute their milk through bulk milk depots; that said circular contains various other fraudulent and untruthful statements concerning the manner in which cut-rate dairies operate, with particular reference as to sanitation, wages and hours of labor of employees, and that all of said statements are wholly untrue and known to be untrue to the

Defendant Union; that said circular is libelous per se; that by virtue of the foregoing, the same is an unlawful black list, and creates a secondary monopoly; that despite the fact that the Defendant Union has been informed and know that the Plaintiff Dairies have now become unionized that they still continue to publish and distribute said circular, and have mailed the same through the United States mail.

31 Thirty-seventh: That for the reason that milk is daily transported into the City of Chicago from States other than the State of Illinois, and is at once distributed for sale in the City of Chicago together with other milk regardless of the place of the origin of said other milk, as part of a daily and continuous operation, as hereinabove described, that the acts of the Defendants as hereinbefore and hereinafter described creating said secondary boycott, occur in the stream of and directly burden and obstruct the flow of trade and commerce between the several States as defined by the said Laws of the United States.

Thirty-eighth: That the Plaintiff Dairies and their respective workers, said workers being members of the Plaintiff Union, at the time hereof and in the past have worked together in harmony and understanding without strife or controversy, and that no strife or controversy exists as of the date hereof; that no dispute concerning the wages of said workers, hours of employment or any of the terms or conditions of employment exist between the Plaintiff Dairies and their said workers; that the Plaintiff Dairies in recognition of the right of their workers to designate representatives for the purpose of collective bargaining have entered into written agreements with said Plaintiff Union wherein and whereby the said Plaintiff Union is

32 recognized as the sole representative of said workers for the purpose of collective bargaining, as hereinbefore stated; that the said contract remains in full force and effect and is a binding obligation upon the Plaintiff Dairies and the Plaintiff Union; that the acts and conspiracy of the Defendants herein and their agents is calculated to induce the breach of said contract by the said Plaintiff Dairies.

Thirty-ninth: That by reason of the foregoing, that no labor dispute exists within the terms of the Norris-La Guardia Act and that the provisions and requirements thereof are not herein involved.

Fortieth: That the commission of said acts by the said Defendants, so constituting a secondary boycott as above, violates the right of the Plaintiff Dairies as guaranteed

to them by the Constitution of the United States and the Laws thereof, to conduct their respective business in a lawful and proper manner free from unlawful molestation and interference, and denies to their respective workers and employees their right to be secure in their respective jobs, and of their right to work free from illegal molestation and interference, and denies to the said Plaintiff Union its right to collectively represent and protect their respective members, and denies to said Independent Milk Stores their right to remain in business and to conduct their respective business in a lawful and proper manner without unlawful molestation.

33 Forty-first: That for the past five years the Plaintiff Dairies and other independent cut-rate dairies have been attempting to sell milk at a reasonable price through the medium of such cash and carry milk stores, and that throughout the said period the said Defendants, in their desire to prevent the same, have, by their concerted effort, conspiracy, confederation and agreement as hereinafter described, conducted a continuous course of unlawful acts and have and do continue to commit the unlawful acts of violence, threat, force, intimidation and boycott as hereinbefore and hereinafter particularly described.

Forty-second: That again, and on or about the 15th day of April, A. D. 1938, the said Defendants, James Kennedy, Robert G. Fitchie, Fred C. Dahms, F. Ray Bryant, Alvin C. Richards, Joseph L. Patterson and Steve Sumner, acting individually and also in their several respective capacities as officers, agents and servants of and for the said Defendant Union, did enter into an unlawful conspiracy, combination, confederacy and agreement with each other and with other persons to this Plaintiff unknown, the purpose of said conspiracy, combination, confederacy and agreement being to restrain trade and commerce among the several States contrary to the provisions of the Laws of the United States in regard thereto, in so far as the said commerce relates to the large and continuous flow and stream of interstate commerce created by and made up

34 of the importation of fluid milk and cream into the State of Illinois, of which said large and continuous flow and stream of interstate commerce, the milk and cream used by the Plaintiff Dairies and all other dairies operating in the City of Chicago in direct competition therewith, is an integral part and is inextricably intermingled and fused therewith, and in the course of which the conduct of the business of Plaintiff Dairies is maintained; and to secure a monopoly of trade and commerce in said fluid

milk and cream so transported in interstate commerce and to secure a monopoly of the business of distributing milk in the City of Chicago, which occurs in and as a part of the continuous flow and stream of interstate commerce; and to unlawfully fix and determine the retail price of milk in the City of Chicago, and to maintain an artificial price therefor, and to prevent the Plaintiff Dairies and other independent cut-rate dairies from selling cash and carry milk at a reasonable price, all of which occurs in and as a part of the continuous flow and stream of interstate commerce.

Forty-third: That said conspiracy, confederation, combination and agreement so ventured into by said Defendants hereinabove specifically enumerated, has been joined in from time to time by various other persons whose
35 names are unknown to the Plaintiff and the exact time of their joinder and entry into said conspiracy, confederacy, combination and agreement is unknown to this Plaintiff, but which facts are well known to all of the said Defendants.

Forty-fourth: That the said milk stores selling the products of said Plaintiff Dairies display conspicuously in their windows a large cardboard sign of the approximate size of fifteen inches in height and eleven inches in width, whereon the following printing appears:

"Grade A Milk and Cream, in this store is processed and delivered by Union Workers who are members of the Amalgamated Dairy Workers, L. I. Union No. 819";

that the printing on said sign is of a large size, so that the same can be read at a great distance and that the words "Union Workers" and "Amalgamated Dairy Workers" are printed in type more than one inch in height; that any person or persons walking in front of said stores can see and clearly read said sign advising them that the products sold by said store are processed and delivered by union workers affiliated with the Plaintiff Union; that the said picketing, boycotting and other unlawful acts of the Defendant are all being performed and directed against the Plaintiff Dairies herein with knowledge of the fact that
36 said stores are selling milk and cream processed and delivered by union workers affiliated with the Plaintiff Union, but that the said Defendants continue in said unlawful acts of picketing, boycotting and otherwise despite of said fact and in defiance thereof.

Forty-fifth: That one of the means employed by the Defendants for the purpose of effecting the said conspiracy is to cause the storekeepers now distributing the milk and

cream of Plaintiff Dairies, to discontinue purchasing from the Plaintiff Dairies or from vendors distributing the same, by unlawful picketing at and about the stores operated by said persons, and by the unlawful display of force, intimidation, threats of force, acts of violence, opprobrious epithets and other unlawful acts directed towards said storekeepers and directed at persons or customers desiring to purchase from said storekeepers, and by the distribution of false and fraudulent statements concerning the said Plaintiff Dairies, and by unlawfully preventing deliveries of other commodities and articles which are necessary to be made to said stores, and which are a necessary part of the stock of merchandise purchased and sold by said stores, from bakers, meat and sausage distributors, icemen and other persons who are and have for the time last past been delivering the said and other commodities to said stores.

37 Forty-Sixth: That the Defendants as a further means of effecting said conspiracy have sought to foment industrial strife between the Plaintiff Dairies and the persons working in the said dairies, by said unlawful picketing and the other said unlawful acts of force and violence, to the end that the rights of said workers and the said Plaintiff Union to collective bargaining shall be lost and destroyed, industrial strife created, and interstate commerce burdened and obstructed thereby, all contrary to the laws of the United States, and the public policy thereof as announced by the Wagner Labor Relations Act and elsewhere.

Forty-Seventh: That the Defendants as a further means of carrying out and effecting said conspiracy seek to eliminate the Plaintiff Dairies and all other independent cut-rate dairies from the distribution of milk in Chicago and its vicinity, by acts of force and violence directed against the Plaintiff Dairies, to the end that thereafter they can completely control and monopolize the distribution of milk in the City of Chicago and vicinity, by virtue of the fact that the Defendant Union represents the milk wagon drivers of all but the independent cut-rate dairies in Chicago, the Defendant Union will thereby completely control and monopolize the entire distribution of milk in the City of Chicago, all in restraint and monopoly of interstate trade and commerce.

38 Forty-Eighth: That the Defendants as a further means of effecting said conspiracy seek to control the retail price of milk in the City of Chicago, and prevent the competition of the sale of cash and carry milk at a lower price with its attendant saving and benefit to the public at

large, denying to the public the benefit and advantage of purchasing milk at reasonable prices and thereby to substantially burden, effect, limit and restrict the amount of milk transported in interstate commerce into the City of Chicago, by the unlawful acts of force and violence herein set forth, and that said acts do constitute a direct and immediate burden, restriction and limitation upon interstate commerce.

Forty-Ninth: That the Defendants as a further means of effecting said conspiracy seek to control and limit the amount of milk received by the Plaintiff and other cut-rate dairies and thereby limit and restrict the sale thereof in the City of Chicago by the unlawful acts of force and violence as herein set forth, all of which acts constitute a direct burden, restriction and limitation upon interstate commerce.

Fiftieth: That the said conspiracy has been, and at the date hereof, is being conducted with full force and effect and that many storekeepers have thereby been caused to discontinue purchasing milk from Plaintiff Dairies, by means of said conspirators unlawfully causing pickets
39 to patrol before the places of business of said storekeepers and by the other acts of unlawful force, threats of force, intimidation, violence, vandalism, and otherwise as herein more specifically set forth, conducted towards the owners and employees of said store, and against persons patronizing or desiring to patronize said stores; that the acts committed pursuant to said conspiracy have caused many of said stores to discontinue purchasing products of the Plaintiff Dairies by reason of the fact that said unlawful acts have prevented the delivery of other commodities, wares and merchandise, such as bread, meat, groceries, ice cream and other articles necessary to the conduct of the business of said stores; that by virtue of said stores so discontinuing to purchase the products of Plaintiff Dairies, that the competition with dairies employing members of Defendant Union, and who distribute by house to house delivery, has been materially diminished and that the same has created an ulawful monopoly and has directly restricted and limited the flow of milk in interstate commerce contrary to the laws of the United States; that thereby the Plaintiff Dairies, because of their inability to regain the patronage of said stores by virtue of the continuance of said threats and acts of force and intimidation, have and do now suffer irreparable damage.

40 Fifty-First: That the members of the public of the City of Chicago, by virtue of the pickets stationed before said independent milk stores, and by virtue of said

members of the public being accosted, insulted and offended, and by virtue of the many acts of force and violence against their person and property, have become afraid to patronize said milk stores and have caused to patronize the same in large quantities; that said members of the public, despite their desire to effect savings by the purchase of said cut-rate milk, have been compelled to purchase milk at higher prices from dairies employing workers who are members of the Defendant Union, despite their wishes to continue to purchase milk from stores selling the products of Plaintiff Dairies; that by virtue of the foregoing and other matters herein contained, the public interest is herein involved and the interest of the public in purchasing milk at reasonable prices is being defeated and prevented and that the said public interest merits the consideration and protection of this Court; that by virtue of the foregoing, a monopoly in restraint of trade has been created, which unlawful monopoly directly restricts and limits the flow of milk in interstate commerce contrary to the Laws of the United States; that because of the inability of the Plaintiff Dairies to regain the patronage of said members of the public, said Plaintiffs suffer irreparable damage.

41 Fifth-Second: That the said Defendants, in pursuance of said unlawful conspiracy, confederacy, combination and agreement, aforesaid, and in order to give effect to the purpose thereof and for the purpose of accomplishing and effecting the same have at the various times and places as in this paragraph hereinafter specifically enumerated, committed the following unlawful acts, among other things:

42 a. That, on, to-wit: May 6, 1938, the Defendant James Kennedy, visited the store of Albina Puszkiewicz, conducted at 8140 Exchange Avenue, Chicago, Illinois, and selling the products of the Plaintiff Lake Valley Farm Products, Inc., and threatened that unless the said store owner dis-continued the sale of said milk, that the Defendant Union would cause said store to be picketed; that on May 11, 1938, and thereafter the said store was and has been picketed by two persons patroling in front of said store carrying a legend stating "this milk store is unfair to milk wagon drivers union Local 753, I. B. T. Affiliated with the A. F. of L."; that said pickets have spoken with and prevented patronage of said store by creating fear in patrons and potential patrons thereof:

b. That on May 6, 1938, two representatives of the defendant Union whose names are unknown, called on one Chester M. Webster, who conducts a grocery store at 1480

Foster Avenue, Chicago, Illinois, and sells milk of the Lake Valley Farm Products, Inc., and stated that unless said store owner dis-continued purchasing milk from Plaintiff Dairy that said store would be picketed.

c. That on, to-wit: May 7, 1938, two representatives of the Defendant Union, whose names are unknown entered the store of one Joseph Spry, located at 1803 W. 58th Street, which store sells the product of the Plaintiff Lake Valley Farm Products, Inc., and threatened the owner thereof by telling him that unless the Union Card distributed by Plaintiff Union, and as hereinbefore referred to and described, was removed from the window of said store, that said window would be broken.

d. That, on, to-wit: May 10, 1938, the plate glass window at the store conducted by F. Fischer at 4008 Bell Avenue, Chicago, Illinois, which store sells milk of Lake Valley Farm Products, Inc., was broken by a cement rock being thrown through the same by a person whose identity is unknown.

e. That on, to-wit: May 6, 1938, two representatives of the Defendant Union, whose names are unknown, entered the store of one, Margaret Balika, conducted at 545 W. 103rd Street, Chicago, Illinois, and selling products of the plaintiff Lake Valley Farm Products, Inc., and threat-
43 ened that the plate glass window of said store would be broken unless the said Union card of the Plaintiff Union as hereinbefore referred to and described, was removed from said window.

f. That on, to-wit: May 9, 1938, at or about the hour of 3:00 A. M. the plate glass window of the store conducted by W. H. Smith, at 3810 Lake Park Avenue, Chicago, Illinois, and selling the products of the Plaintiff Lake Valley Farm Products, Inc., was smashed by persons whose identity is unknown.

g. That on, to-wit: April 12, 1938, pickets were stationed in front of the store conducted by Marie Laychak, at 936 E. 93rd Street, Chicago, Illinois, selling the products of the Plaintiff Lake Valley Farm Products, Inc., and that said store owner was visited by a representative of the Defendant Union, whose name is unknown, and was threatened that if she did not cease selling the products of said Plaintiff Dairy, that her store would be bombed, that said picketing continued until April 22, 1938, on which date the store owner was compelled to and did cease selling products of the said Plaintiff Dairy.

h. That on, to-wit: May 3, 1938, a representative of the Defendant Union visited the store operated by Mae

Sitko, at 4345 Fullerton Avenue, Chicago, Illinois, selling the products of the Plaintiff, Wagner Dairy Products, who demanded that said store owner remove all of said plaintiff's milk products and replace the same with products from dairies employing members of the defendant Union; that upon the refusal of said store owner, the said representative stated that said store would be picketed and on the same day two pickets appeared and have since been picketing said store, that said pickets harrass and disturb the patrons and potential patrons of said store and that the business of said store has fallen off materially.

i. That one Michael J. Shannon, operates a grocery store at 3146 Irving Park Blvd., Chicago, Illinois; that said person commenced said business in 1935, at 2627 N. Clark Street, Chicago, Illinois, selling the products of the
44 Plaintiff Lake Valley Farm Products, Inc., that said store was picketed for eight months and that said store owner was compelled to abandon said location and thereafter opened a store at 5051 N. Clark Street, Chicago, Illinois; that the windows of said stores were broken and the said store bombed three times, compelling the abandonment of said location;

j. That on, to-wit: May 5, 1938, an agent of the Defendant Union, whose name is unkonwn, entered the store of one Carl Wutzen, located at 3426 S. Halsted Street, which store sells the products of one of the cut rate dairies and stated that unless said store owner discontinued purchasing milk from cut rate dairies, that the store would be picketed by the defendant union.

k. That on, to-wit: May 6, 1938, a representative of the Defendant Union whose name is unknown entered the store of G. V. Dickson, conducted at 4309 Lake Park Avenue, Chicago, Illinois, and selling milk of Lake Valley Farm Products, Inc., and stated that unless said store owner discontinued to purchase milk from said plaintiff dairy and purchase from a dairy employing members of the defendant union, that said store would be picketed.

l. That on, to-wit: May 13, 1938, the plate glass window of the milk store conducted by J. T. Bazik, at 4411 Kimball Avenue, Chicago, Illinois, which store sells the products of Lake Valley Farm Products, Inc., was broken by a missile thrown by a person unknown to the Plaintiffs; that said business was commenced on May 18, 1937, at which time the said store owner sold the products of a large dairy which dairy employs members of defendant Union, and on August 15, 1937, commenced handling the products of the Plaintiff Lake Valley Farm Products, Inc.; that with-

in a few days after commencing to handle the products of the said plaintiff dairy, in August 1937, the window of said store was broken by a missile thrown by a person unknown to the Plaintiffs.

That on May 6, 1938, a member of the Defendant Union in the employ of one of the large dairies hereinbefore mentioned, entered the store located at 163½ W. North Avenue, Chicago, Illinois, and demanded of the owner that he discontinue selling the products of the Plaintiff Wagner Dairy Products; that said store owner refused and
45 thereafter a representative of the Defendant Union, whose name is unknown, called upon said store owner and stated that if he did not cease selling said milk and purchase milk from the Company employing the man first visiting said store, said store would be picketed; that said store owner refused and that the next morning two pickets appeared, which pickets refused to allow deliveries of necessary articles into said store; that the representative of said dairy then returned and removed the entire stock of Wagner Dairy Products, including the milk cases and milk bottles which are the sole property of said plaintiff, and paid said storekeeper $15.00 therefore; that said storekeeper states that he still desires to buy milk from the plaintiff Wagner Dairy Products, and that his customers prefer to purchase the same, but that he is afraid to continue to purchase the same.

m. That one Olga Hansen, formerly operated a milk store at 4345 W. Fullerton Avenue, Chicago, Illinois; that on, to-wit: February 1, 1938, at which time said store was selling products of the Plaintiff Wagner Dairy Products; that a representative of the Defendant Union, whose same is unknown demanded that said store owner discontinue said sales and purchase milk from a dairy employing members of the defendant Union; that said store owner refused to comply with said demands and that the windows of said store were broken on fourteen occasions; that the insurance company applied to for such coverage stated that if the said storekeeper would sell milk from dairies employing members of the defendant Union, that the windows would be safe and that they would write insurance thereon. That by virtue of the foregoing and other matters the said party was required to and did abandon said store.

n. That on, to-wit: May 4, 1938, two men who stated they were representatives of the Defendant Union, and whose names are unknown, entered the store conducted by Karrie Kmier, at 4316 S. Wood Street, Chicago, Illinois, selling the products of the Plaintiff Lake Valley Farm

Products, Inc., and said: "You are selling cut rate at 8½c. If you do not stop at once to sell milk at this price, we will picket this store." That on the next morning these two representatives of the Defendant Union commenced to and did thereafter picket said store with a placard bearing the legend as hereinbefore described.

o. That one Max Weiss, conducting a milk store at
46 2122 W. Division Street, Chicago, Illinois, and selling the milk products of one of the cut rate dairies has had the window of said store broken on six occasions by unknown persons, has been attacked and beaten and had the tires of his automobile truck slashed in the month of June of 1937, by reason of his refusal to discontinue the said sale of cut rate milk.

p. That on, to-wit: May 4, 1938, a representative of the Defendant Union whose name is unknown, visited the store conducted by Lillian Pappas at 625 E. 75th Street, Chicago, Illinois, selling the milk products of Lake Valley Farm Products, Inc., and stated that he was sent from the Defendant Union and that unless said store owner discontinued such sales and sold milk from a dairy employing members of the defendant Union, that said store would be picketed; that the windows of said store were broken by unknown persons within the past two months.

q. That on or about to-wit: April 15, 1938, the Defendant James Kennedy visited the store conducted by Gertrude Dimian, at 5026 Cottage Grove Avenue, Chicago, Illinois, selling the products of Lake Valley Farm Products, Inc., and threatened to picket the said store if the said sales were not discontinued.

r. That on, to-wit: May 13, 1938, two representatives of the Defendant Union, whose names are unknown, visited the store conducted by J. J. Fox, at 2201 Foster Avenue, Chicago, Illinois, selling the products of Lake Valley Farm Products, Inc., and threatened that unless said sales were discontinued that all deliveries of bread, groceries, ice and other products would be prevented from coming into said store; that on November 15, 1936, the window of said store was broken by an "unknown person" who threw a milk case through the same.

s. That representatives and agents of the defendant Union whose names are unknown, within the two weeks last past prior to the filing of the bill of Complaint herein, visited stores located at 5058 Kenmore Avenue; 3810 Lake Park Avenue; 6703 N. Clark Street; 5201 S. Halsted Street; 402 E. 63rd Street; 3112 Montrose Avenue; 5516 S. Morgan Street; 6865 N. Glenwood Avenue; 3606 Wilton Avenue;

5367 S. Rockwell Street; 2304½ N. Narragansett Ave-
47 nue; 805 Oakwood Blvd.; 5855 S. Kedzie Avenue; 4249
W. Roosevelt Road; and have visited many other stores in the City of Chicago, and State of Illinois, and have threatened that if said stores did not discontinue the sale of products of the plaintiff dairies, and other independent cut rate dairies, that said stores would be picketed and other unlawful and violent acts would be committed.

t. That stores selling milk of the plaintiff dairies, and other independent cut rate dairies located at 507 W. 69th Street, 2815 N. Troy Street; 625 E. 79th Street; 408 E. 79th Street; 353 E. 75th Street; 4018 Broadway; 1254 E. 81st Street; 49 E. 105th Street; 1242 N. Damen Avenue; 2717 W. 63rd Street; 4833 N. Kedzie Avenue, 2450 W. 59th Street; 4411 Kimball Avenue; 4111 Broadway; in the City of Chicago, Illinois, and countless other stores selling said products have had the windows of said stores broken or said stores bombed or set on fire, by persons whose names are unknown, all within the period referred to by the Bill of Complaint herein.

u. That on May 4, 1938, a representative of the defendant union entered the store conducted by one Edwin St. Pierre, at 6250 Maplewood Avenue, Chicago, Illinois, selling the products of Lake Valley Farm Products, Inc., which representative demanded that the said store owner remove from his window the said Union card of the Plaintiff Union as heretofore described herein; that on May 11, 1938, another representative of the Defendant Union whose name is unknown visited the store conducted by M. C. Monoyer at 5635 Irving Park Blvd., Chicago, Illinois, and made a similar request.

v. That the said pasteurizing plant of the plaintiff Lake Valley Farm Products, Inc., hereinbefore mentioned was in the month of June, 1935, and in the month of September, 1935, bombed by unknown persons; that on both occasions serious damage and destruction was ocasioned.

w. That, the pasteurizing plant of the Plaintiff Josef Wagner, was bombed on three occasions within the time referred to in the Bill of Complaint herein; that on all of said occasions serious damage and destruction of property
was occasioned and that on one occasion the life of an
48 innocent third person was endangered; said third person suffering physical injury therefrom; that in addition other acts of force and violence have been directed at and against the said Plaintiff; all of which acts the said Plaintiff is ready to prove in Court.

x. That in addition, to the foregoing specific acts, count-

less other acts of violence consisting of the breaking of windows, the overturning of delivery trucks, the assaulting and beating of store owners and persons selling and delivering milk of independent cut rate dairies, bombing and the like have been committed against the distributors of cut rate milk in the City of Chicago, Illinois, during the time referred to in the Bill of Complaint herein.

y. That on, to-wit: May 14, 1938, one O'Connor, a business agent and representative of the Defendant Union visited the store of Joseph Andrews, located at 1604 W. 82nd Street, Chicago, Illinois, selling milk and cream of Lake Valley Farm Products, Inc., and threatened that unless said storekeeper discontinued such purchases, that said store would be picketed; that on May 18, 1938, said picketing was commenced and now continues in the manner as hereinabove in other cases described.

49 Fifty-third: That by virtue of the foregoing many of the stores heretofore patronizing Plaintiff Dairies have been unlawfully prevented, and at present do desist from doing so; that the members of the public of the City of Chicago heretofore patronizing said stores selling Plaintiffs' products, have been prevented and now desist from doing so; that Plaintiff Dairies have lost the patronage of said stores and said members of the public and have suffered and do suffer irreparable damage and injury thereby; that the Plaintiff, Lake View Cooperative accordingly had its said outlet for milk so threatened and limited; that the Plaintiff Union and its members have been and are being denied the right to representation for collective bargaining and the livelihood and employment of the members of Plaintiff Union and Plaintiff Dairies has and is being threatened and endangered; that the Defendants continue in their threats of force and intimidation and in the performance of said unlawful acts, and that if said acts are carried to completion and not restrained by this Honorable Court, that the Plaintiffs will suffer irreparable damage, loss and injury thereby.

Fifty-fourth: That as a result of said unlawful conspiracy and conduct of the Defendants and each of them, the interstate trade and commerce of these Plaintiffs, and of trade and commerce generally in milk and cream coming into the State of Illinois, has been and is being greatly

50 demolished, decreased and restrained, and if said conspiracy, combination, and confederacy is permitted to continue without the intervention of this Court, that it will be impossible for the Plaintiff Dairies and Plaintiff Cooperative to continue in the exercise of their respective business

in the flow and stream of interstate commerce as hereinbefore described, and that said businesses will be ruined and destroyed, and that the Plaintiffs will suffer great and irreparable loss and damage, and that the said Defendants will secure for themselves and for the said dairies employing persons who are members of the said Defendant Union, a complete monopoly of the said interstate commerce, and control all of the milk in said interstate commerce coming into the City of Chicago; that the same constitutes a monopoly contrary to the laws of the United States, and that the said monopoly will be to the great detriment and disadvantage of the general public of who will then be denied their rightful privilege of purchasing milk at reasonable prices brought about by lawful competition in the distribution thereof.

Fifty-fifth: That the foregoing acts of unlawful picketing, violence, force, intimidation, and threats of force and the like, are of themselves criminal acts committed by the Defendants under the guise and pretense of a legitimate labor dispute; that as set forth herein, no labor dispute exists, but on the contrary the said acts are the means
51 whereby the said defendants attempt to give effect and carry out the purposes of their said unlawful conspiracy, confederacy, combination and agreement; that because of the vast number of persons who have joined with the Defendants in said conspiracy, confederacy and agreement and have joined with them in the performance of said wrongful acts, that the same burdens, affects and directly limits and restricts the flow of interstate commerce of the Plaintiff Dairies and Plaintiff Cooperative, and of interstate commerce in general, into the City of Chicago, and that if the Defendants and said other persons conspiring and acting with them are permitted to continue in the performance of said unlawful acts, that the businesses of Plaintiff Dairies and Plaintiff Cooperative will be completely destroyed and ruined, and that Plaintiffs will suffer irreparable damage and injury thereby; that Plaintiffs have no adequate remedy at law to protect themselves from the Defendants and the consequent irreparable damage, the loss and injury that will follow from the continuance of the said wrongful acts of the Defendants.

Fifty-Sixth: That the Plaintiffs and each of them state that they have no adequate or sufficient remedy at law; that because of the foregoing combination, conspiracy and confederacy and the aforementioned acts committed pursuant thereto, that the Plaintiff Dairies and Plaintiff Co-

operative suffered great loss, damage and injury to
52 its good will and to their trade and business; that the said acts of Defendant consisting of said unlawful picketing, violence, threats, intimidation and other acts are continuing, and are now being perpetrated and performed to the constant loss and damage of the business of the Plaintiff Dairies, the Plaintiff Milk Cooperative and the Plaintiff Union, and that unless restrained and enjoined by this Honorable Court, that the said unlawful acts of the Defendants will continue without interruption; that by reason of the facts that the acts of the Defendants constitute a great number of isolated acts of vandalism, destruction, force, violence, threats and intimidation, and because it is impossible for the Plaintiffs to determine the exact number of people who have been threatened and unlawfully acted against, and because it is impossible for the Plaintiffs to determine the exact extent to which their good will, trade and business has been affected, impaired and damaged, and because it is impossible for the Plaintiffs to determine the names and exact number of persons who have ceased patronizing the stores selling Plaintiff Dairies' products by virtue of the unlawful acts of the Defendants, and because it is impossible to determine the exact extent to which the said unlawful acts of the Defendants have diminished interstate commerce, that it is impossible to maintain suits at common law, for the reason that the amount of damage to be claimed in any such
53 suit is of such an indefinite nature that the same would not meet the strict requirement of a common law proceedings as to the exact extent and amount of said damage; that even if the exact amount of damage in all of said instances were ascertainable, a great multiplicity of independent suits would be required to adjudicate and determine each and every of the issues involved in each of said proceedings; that the Plaintiffs state that all of said individual acts of the Defendants are not isolated acts, but are all of a continuing nature and are all part of the means chosen and employed by the Defendants to carry out the purposes and give effect to the said unlawful conspiracy, confederation and agreement of said Defendants; that the continuance of said conspiracy and the acts committed pursuant thereto will ruin and destroy the Plaintiff Dairies and Plaintiff Cooperative's businesses and good will and their trade in milk in interstate commerce, and will directly affect the general trade in interstate commerce; that the businesses of said Plaintiff Dairies and Plaintiff Cooperative, will in the natural

course of things prosper and grow and the membership of Plaintiff Union increase and its affairs prosper if unmolested by the Defendants, and that the exact value to which said good will and said businesses will advance said Union increase is incapable of ascertainment according to the standards of procedure and rules of evidence required in a Court of Law in that regard.

54 Fifty-Seventh: That the Defendants have stated that it is their purpose and intent to continue and persist in said unlawful picketing and other unlawful acts of the nature and kind as hereinbefore specifically set forth, and that the said Defendants have and do threaten the Plaintiffs and storekeepers selling the products of Plaintiff Dairies that they will continue in the performance of said acts interferring, hindering, limiting, burdening and obstructing the interstate commerce of the Plaintiff Dairies and Plaintiff Cooperative as hereinbefore alleged, all pursuant to illegal conspiracy, confederation and monopoly in restraint of trade and commerce among the several states as defined by the Laws of the United States pertaining thereto.

Fifty-Eighth: That by virtue of the fact that no labor dispute exists, as defined by the Laws of the United States, that the said picketing by the said Defendant Union is not peaceful picketing and cannot be disguised as the means of giving publicity to a labor dispute, but is rather an unlawful boycott denying to the Plaintiffs and to the said stores through whom the products of said Plaintiff Dairies are distributed, the full protection of their rights under the constitution of the United States and the Laws passed pursuant thereto; that, therefore, Plaintiffs ask that

55 in determining upon the issuance of temporary and final writs of injunction herein that the Court consider into the question as to the relative loss and damage the parties hereto will suffer or gain by the issuance or denial of said preliminary or final writs of injunction, and in that behalf state that if the said temporary writ and final writ of injunction is denied to these Plaintiffs that they will suffer great and immediate loss and damage, the exact amount thereof is incapable of ascertainment; that daily the Plaintiff Dairies are losing said store outlets, and that daily large number of persons are ceasing to patronize the said stores, that on the contrary, the Defendant Union will suffer no damage or injury whatsoever by the granting of said preliminary or final writs of injunction, for the reason that no property right of the Defendant Union is involved herein; that the Plaintiffs will suffer great, imme-

diate and irreparable damage unless a temporary injunction is issued by the Court, and that the Defendant Union will suffer no immediate damage or loss by the issuance thereof.

Inasmuch, Therefore, as these Plaintiffs, and each of them, are without remedy, except in a Court of Equity, and to the end that the Defendants, Milk Wagon Drivers Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association, Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin C. Richards, and Joseph L. Patterson, individually and
56 in their respective capacities as officers and agents of said Defendant Union, and all of the members of said Union, and all persons who may be now or hereafter may conspire, confederate, combine, agree or arrange with them, the names and identity of which persons are to these Plaintiffs unknown, all of which persons are made parties Defendant to this Bill of Complaint, may be required to make full and complete answer hereto, but not under oath, the answer under oath being expressly waived.

Wherefore, the Plaintiffs pray:

A. That this Court issue a temporary restraining order or preliminary injunction, to be in full force and effect until a final hearing and decree be had and entered herein, and until the further order of the Court, as follows:

1. Restraining and enjoining the Defendants in this proceeding and each and all of them and all of their officers, attorneys, servants, agents, associates, members and employees, aiders and abetters, and all persons acting in conjunction or sympathy with them, from:

a. In any manner unlawfully interferring with, hindering or obstructing the Plaintiffs, their officers, employees or duly authorized agents or representatives, in the free, uninterrupted and unhindered control and direction of their respective affairs.

57 b. In any manner interferring with, hindering, preventing or otherwise discouraging or diverting or attempting to interfere with, hinder, prevent, discourage or divert persons desirous of purchasing milk, cream or other articles from persons, firms or corporations handling, distributing, selling or vending milk and cream of the Lake Valley Farm Products, Inc., or if Josef Wagner trading as Wagner Dairy Products, by the use or display of force

and numbers, signs, placards or banners, by the making of threats, intimidations, jeers, opprobrious epithets, molestation, entreaties or by means of the practice commonly known as picketing.

c. In any manner engaging, directing or procuring others to engage in the practice commonly known as picketing, that is to say, patrolling or causing to be patrolled members of said Milk Wagon Drivers Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, or any other persons, in the vicinity of the Dairy Plants of the Plaintiff Dairies, or in the vicinity of any of the stores operated by persons, firms or corporations handling, distributing, or selling milk and cream of the Plaintiff Dairies or either of them, with banners, placards or other devices.

58 d. In any manner unlawfully interferring with hindering or obstructing the Plaintiff Dairies and Plaintiff Cooperative, their officers, employees or duly authorized agents or representatives in the free, uninterrupted and unhindered distribution of their respective products.

B. That, thereafter, such other Writs and Orders shall issue and be entered herein as to the Court shall seem fit and proper and necessary for the protection of the Plaintiffs, and that the provisions of any temporary restraining order or preliminary injunction be hereafter made permanent.

C. That the Writ of Injunction, as prayed for herein, be issued without bond from the Plaintiffs, by reason of the good cause for so doing, as set forth in this Bill of Complaint.

D. That Writs of Subpoena directed to the said Defendants and each of them issue, commanding them on a day certain to appear and answer this Bill of Complaint, but not under oath, answer under oath being hereby expressly waived, and to abide by and perform such order and decree as the Court may make in the premises.

E. That a temporary restraining order may issue herein restraining the Defendants and each of them, in accordance with the prayer hereof, pending a hearing on said application for a preliminary injunction; that said temporary restraining order may at once be effective and binding on each of the Defendants named.

59 That the plaintiffs may have such other, further and different relief, in the premises, as to this Court shall seem just and proper.

Lake Valley Farm Products, Inc., a corporation.
Signed By: Siegfried Weiss,
its president,
Plaintiff.

Amalgamated Dairy Workers Local Industrial Union No. 819, a voluntary unincorporated Association.
Signed By: Nicholas P. Kost, Jr.,
its president,
Plaintiff.
Signed By: Josef Wagner,
Plaintiff.

Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin.
Signed By: Thos. J. Dascey, *Sec.*,
Plaintiff.

Arthur R. Seelig,
Attorney for Plaintiffs.

60 United States of America. } ss.

State of Illinois, County of Cook. } ss.

Siegfried Weiss, being first duly sworn, upon his oath, deposes and says that he is the President of the Lake Valley Farm Products, Inc., a Corporation, and is the same person who has subscribed the foregoing and attached Bill of Complaint in its behalf, that he has read the Bill of Complaint and knows the contents thereof and he says that the matters and things therein stated are true in substance and in fact, except, as to such things that are therein stated to be upon information and belief, and as to such matters he says, that he believes the same to be true.

(Signed) Siegfried Weiss.

Subscribed and sworn to before me, a Notary Public, authorized to administer oaths this 19 day of May, A. D. 1938.

(Signed) William S. Glassman,
Notary Public.

(Seal)

61 United States of America, } ss.

State of Illinois, County of Cook. } ss.

Nickolas P. Kost, Jr., being first duly sworn, upon his oath, deposes and says that he is the President of Amalgamated Dairy Workers Local, Industrial Union No. 819, a voluntary unincorporated association, and is the same person who has subscribed the foregoing and attached Bill of Complaint in behalf of such Union, that he has read the Bill of Complaint and knows the contents thereof and he says that the matters and things therein stated are true in substance and in fact, except, as to such things that are therein stated to be upon information and belief, and as to such matters he says, that he believes the same to be true.

(Signed) Nickolas P. Kost, Jr.

Subscribed and sworn to before me, a Notary Public, authorized to administer oaths this 19 day of May, A. D. 1938.

(Signed) William S. Glassman,
(Seal) *Notary Public.*

62 United States of America. } ss.

State of Illinois, County of Cook. } ss.

Joseph Wagner, being first duly sworn, upon his oath, deposes and says that he is one of the Plaintiffs in the foregoing and attached Bill of Complaint and that he subscribed to the same. That he has read said Bill of Complaint and he says that he knows the contents thereof and that the matters and things charged therein are true in substance and in fact, except as to such things that are therein stated to be upon information and belief, and as to such matters he says, that he believes the same to be true.

(Signed) Josef Wagner,
Josef Wagner.

Subscribed and sworn to before me, a Notary Public, authorized to administer oaths this 20 day of May, A. D. 1938.

(Signed) William S. Glassman,
(Seal) *Notary Public.*

63 United States of America. } ss.

State of Wisconsin, County of Jefferson. } ss.

Thomas J. Dascey, being first duly sworn upon his oath deposes and says that he is the Secretary of the Lake View Cooperative of Watertown, Wisconsin, a corporation, organized under the Agricultural Cooperation Act of the State of Wisconsin, one of the plaintiffs in the foregoing Bill of Complaint, and the duly authorized agent of said Plaintiff in this behalf; that he is the same person who has subscribed the foregoing Bill of Complaint on behalf of said Corporation; that he has read the said Bill of Complaint, knows the contents thereof and that the matters and things therein stated are true in substance and in fact, except as to such things that are therein stated to be upon information and belief and as to such things he says, that he believes the same to be true.

(Signed) Thos. J. Dascey,
Sec.

Subscribed And Sworn to before me a notary public in and for the State of Wisconsin and County of Jefferson this 17 day of May, A. D. 1938.

(Signed) Francis P. Beggar,
Justice of the Peace, Notary Public, Jefferson County, Wisc.

Exhibit A

CUT-RATE MILK IS POSSIBLE ONLY WHEN IT IS HANDLED, PROCESSED AND DELIVERED BY POORLY PAID NON-UNION WORKERS . . . .

An old barn converted into a milk depot. This photo shows one of the many bulk or dip milk stores dotting the fringe of Chicago.

Pop, peanuts and caramel apples are featured in this roadside milk store. Note the dilapidated storage shed in the rear and that the milk is advertised as "Wisconsin quality."

Another old shed on the Northwest Side converted into a roadside milk depot.

The photo below shows one of the cut-rate milk stores in Chicago where milk is cheaper because it is handled by poorly-paid non-union help.

Within the past year, the flood of cut-rate milk has been increasing to such proportions that it is not only causing a serious unemployment problem among the workers in the Milk Wagon Drivers' Union, Local 753, and the Dairy Employees' Union, Local 754, but, directly and indirectly, it is striking at the very roots of the labor union movement itself.

Cut-rate or low cost bulk milk is possible only because of the low pay and long hours being forced upon the drivers and workers in non-union dairies.

Today, union dairy employees and drivers are suffering because other union men purchase this cut-rate milk, and by so doing, bring tragic unemployment to these men and their families. It is estimated that at least 75% of all of the bulk and cut-rate milk sold in the Chicago area is being purchased and consumed by the families of trade union men who thus encourage this menace to the cause of trade unionism.

Buying cut-rate milk through groceries and delicatessens produces further unemployment and should be given serious consideration by every union man.

These outlets are served by great wholesale trucks where one driver delivers many thousands of quarts of milk. Such drivers, and there are many of them, are literally taking hundreds of jobs from the ranks of regular union drivers. Thus we see that the purchase of cut-rate milk in these stores greatly increases unemployment.

ROADSIDE MILK STANDS ARE A HEALTH MENACE

In a recent survey conducted by an independent research organization, many truly astounding facts were uncovered. At numerous stands, outside the city limits, dirty containers were offered, and these were unhesitatingly filled without so much as inspecting or rinsing the container. In many stands the milk was handled with dippers and funnels which were unwashed and exposed to all types of contamination. In other stands the containers were sealed with wads of crumpled paper.

In some milk stands, the paper milk containers were stored in open bins at the floor level, and so exposed to harmful germs. It is hard to believe that so fine a food product as milk could possibly be handled in such an unsanitary and disease-producing manner.

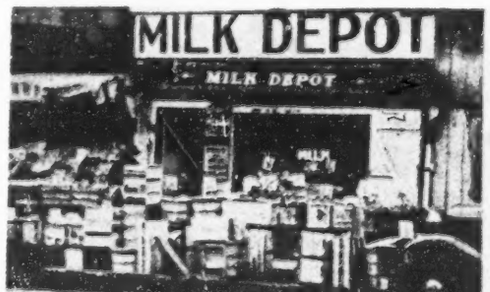
Many food buyers are attracted to these stands because they believe they are saving money, when in reality they may be jeopardizing the health of their own families. Usually bulk pasteurized milk sold at cheap prices does not come up to legal standards. The state law on pasteurized milk does not allow the sale of dip, loose, or bulk pasteurized milk, but requires it to be sold only in the container in which it is placed at pasteurization plant. Many truck loads of milk are brought into Illinois each day from Wisconsin, while many more come from farms whose milk has been refused by responsible milk distributors.

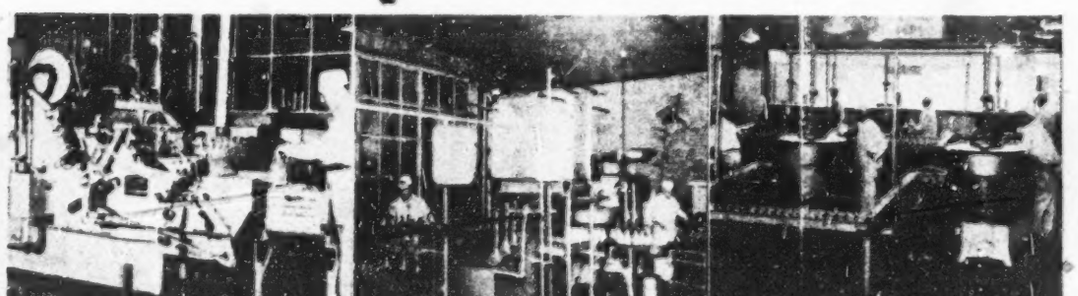
EVERY UNION WORKER CAN HELP

Every union worker should insist that the milk consumed in his family, and wherever possible in the families of his relatives and friends, should be milk that is processed and delivered by union men. If you are in doubt, ask your driver — ask to see his union card or button as illustrated below. It will take only a few seconds to determine whether or not your milk is being handled by union men. Just as the drivers and employees in the dairy unions are being called upon to support the interests of other union men in order that their problems may be solved, so, too — NOW — these drivers and dairy employees are seeking the wholehearted co-operation of every sincere and sympathetic union worker in the entire Chicago area.

Study the photographs shown and ask yourself — "Is the milk that we drink at home produced in dairy plants as fine and modern and sanitary as these?" — then do your part to support the cause of trade unionism and aid these other union men in their heroic struggle against this unfair non-union competition.

Typical interiors of modern dairies where the milk is processed by highly-skilled union men.





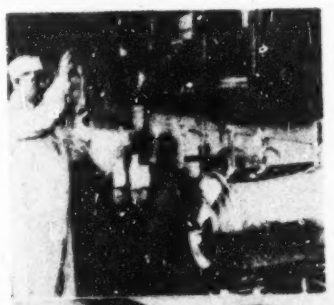
Every Union Driver wears this button. Look for it.

THE INCREASING FLOOD OF LOW-PRICED MILK NOW THREATENS ALL ORGANIZED LABOR

WHY UNION HANDLED AND DELIVERED MILK IS BETTER FOR YOU

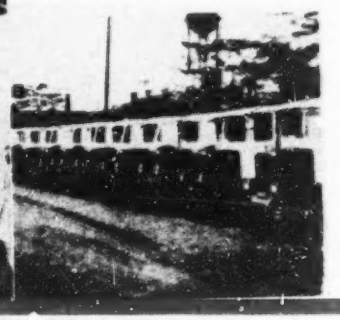
Union handled and delivered milk is actually safer to use and better for you. Very few people know that every union dairy employee must undergo frequent rigid health examinations. Not only do these sanitary standards apply to the employees themselves, but they apply with equal force to every step in the handling and processing of milk.

In addition to the added value of these precautionary steps, union dairies maintain splendid laboratories that constantly check the quality of the milk. This is an added and costly health measure, but is well worth it because of the added quality brought to the milk.



Yes, union processed and delivered milk is your guarantee of quality. Insist on this for your own sake and to help the cause of trade unionism as well.

See FEDERATION NEWS, labor's own newspaper, every week for latest developments on this fight.



HERE IS WHAT YOU CAN DO TO HELP—

Right now —check on the source of the milk used in your home. Ask the milk wagon driver to show you his Union button. Do this soon—before it slips your mind.

Do not patronize any stand, store or depot that sells dip or bulk milk, for no dairy supplying such stores has *any* Wage Agreement with either Local 753 or Local 754.

Protect your health! Beware of dip or bulk milk! Remember that such milk is sold in violation of the Illinois State Law which requires that all pasteurized milk be sold in the original container filled at the pasteurizing plant.

The following dairies do not have a wage scale with either union listed above and are among those supplying milk to cut-rate stores, stands and depots and so must be known as—

NON-UNION DAIRIES

(As of January 25, 1938)

Blue Ribbon Dairy
Edgewater Dairy Products Company
Farmers Co-operative Milk Company
Lake Valley Farm Products
Lake View Dairy
Meadowmoor Dairies, Inc.
Uptown Dairy Company
Wagner Dairy Company

If you are in doubt as to your dairy, call

UNION HEADQUARTERS

220 S. Ashland Ave. - Phone { MONroe 7344 / SEEley 7038

This folder prepared and printed for the Milk Wagon Drivers' Union, Local 753, and the Dairy Employees Union, Local 754, by The Bureau of Research, Inc., Chicago, Illinois.

ADDITIONAL COPIES *FREE* ON REQUEST

A GROWING MENACE TO UNION LABOR

67 And afterwards, to wit, on the 23rd day of May, 1938, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge, appears the following entry, to wit: Entered May 23, 1938.

68 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—16073) * *

Monday, May 23, A. D. 1938.

Present: The Honorable Philip L. Sullivan, Judge of said Court.

It Is Ordered by the Court that the Plaintiffs motion for a Preliminary Injunction be and the same is hereby referred to Charles A. McDonald, Master.

Master to file his report thereon in five (5) days.

69 And on, to wit, the 27th day of May, 1938, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Answer, in words and figures following, to wit: Filed May 27, 1938.

70 DISTRICT COURT OF THE UNITED STATES OF AMERICA.

* * (Caption—16073) * *

ANSWER.

To the Honorable, the Judges of Said District Court in Chancery Sitting:

Now comes the defendants, Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson by David A. Riskind, their duly authorized agent and attorney, and for answer to the Bill of Complaint heretofore filed herein say:

For a first defense the defendants, jointly and severally answering, say:

First: The defendants, in answer to Paragraph First of the complaint heretofore filed, have no knowledge or information as to the allegations contained therein, and for

lack of such knowledge or information neither admit nor deny, but demand strict proof thereof.

Second: The defendants, in answer to paragraph Second of the complaint hereinbefore filed, have no knowledge or information as to the allegations contained therein, and for lack of such knowledge or information neither admit nor deny, but demand strict proof thereof.

71 Third: These defendants admit all of the allegations contained in paragraph Third of the complaint.

Fourth: These defendants have no knowledge or information as to the allegations contained in Paragraph Fourth of the complaint, and for lack of such knowledge or information neither admit nor deny, but demand strict proof thereof.

Fifth: These defendants admit all of the allegations contained in paragraph Fifth of the complaint.

Sixth: These defendants admit all of the allegations contained in paragraph Sixth of the complaint.

Seventh: These defendants admit all of the allegations contained in paragraphs, Seventh to Twelve, both inclusive, of the complaint.

Eighth: These defendants, in answer to paragraph Thirteenth, jointly and severally deny that this is a suit of a civil nature in Equity, which arises out of the Laws of the United States enacted to give protection to trade and commerce and against restraints and monopolies, being "An Act To Protect Trade and Commerce Against Unlawful Restraints and Monopolies" approved July 2, 1890, 15 U. S. C. A. Sections 1 to 7, and commonly known as the Sherman Anti-Trust Act, and "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and For other Purposes" approved October 15, 1914, 15 U. S. C. A. Sections 12 to 27, commonly known as the Clayton Act; and defendants further allege that the claim of the plaintiff do not arise out of said laws within the meaning of the Statutes of the United States of America giving jurisdiction to the various district courts of the United States. Defendants further state that the Statute of the State of Illinois entitled "An Act Approved June 28, 1919, Amending the Conspiracy Act of March 27, 1874, has no relevance or application to the facts alleged in the complaint. Defendants further state that Section 19 of the United States Criminal Code has no relevance or application to the facts stated in the complaint. Defendants further state that under each and all of the Statutes mentioned in Para-

72 graph thirteenth by the plaintiffs, there is no jurisdiction in the District Court of the United States, for

the Northern District of Illinois, Eastern Division, over the subject matter of the facts alleged in plaintiffs' complaint.

Ninth: Defendants, in answer to paragraph Fourteenth of the complaint, deny that there is a proper diversity of citizenship so as to give this court jurisdiction of said cause because the complaint is filed in the name of Lake Valley Farms Products, Inc., a corporation; Amalgamated Dairy Workers Local, Industrial Union No. 819, a voluntary unincorporated association; Josef Wagner, doing business as Wagner Dairy Products; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation, of the State of Wisconsin, only one of whom is a resident of a foreign state; that in order to create a diversity of citizenship necessary to give this court jurisdiction of the above case, all of the four plaintiffs must be non-residents of the State of Illinois.

Tenth: These defendants have no knowledge or information as to the allegations contained in Paragraphs Fifteenth to Seventhteen, both inclusive, and for lack of such knowledge or information, neither admit nor deny the same, but demand strict proof thereof.

Eleventh: These defendants have no knowledge or information as to the allegations contained in paragraph Nineteenth of the complaint, and for lack of such knowledge or information neither admit nor deny the same, but demand strict proof thereof.

Twelfth: These defendants deny each and every allegation contained in Paragraph Twentieth of the complaint.

Thirteenth: These defendants have no knowledge or information as to the allegations contained in paragraphs Twenty-First to Twenty-Sixth, both inclusive, of the complaint, and for lack of such knowledge or information, neither admit nor deny the same, but demand proof thereof.

Fourteenth: These defendants, jointly and severally, answering paragraph Twenty-Seventh of the com-
73 plaint, admit that there are two methods of delivery as alleged in said paragraph Twenty-Seventh, but state that they have no knowledge as to the other facts contained in said paragraph Twenty-Seventh, and for lack of such information and knowledge, neither admit nor deny but demand strict proof thereof.

Fifteenth: These defendants, jointly and severally, in answer to paragraph Twenty-Ninth of the complaint, deny that the said vendors, as alleged in said paragraph, are not eligible for membership in the defendant Union, but state the fact to be that any vendor is eligible to membership

providing, of course, that he agrees to comply with the Constitution and By-Laws of the said defendant Union.

Sixteenth: These defendants, jointly and severally in answer to Paragraph Thirtieth of the Complaint, deny that the said vendors referred to in Paragraph Thirtieth of the complaint are not eligible as members of the defendant Union, but state the fact to be that any person engaged in the delivery of milk is eligible to membership in the said Union provided, however, they agree to conform with the Constitution and By-Laws of the said defendant Union.

Seventeenth: These defendants, jointly and severally in answer to paragraph Thirty-First of the complaint, state that they have no information or knowledge of the allegations contained therein, and for lack of such knowledge or information, neither admit nor deny the same, but demand strict proof thereof.

Eighteenth: These defendants, jointly and severally in answer to paragraph Thirty-Second of the complaint, admit that the defendant Union has collective bargaining contracts with the said dairies as mentioned in said paragraph and that the said dairies do employ members of the defendant Union. Defendants admit that the dairies mentioned in Paragraph Thirty-Second do employ members of the said defendant Union and that said dairies distribute milk to the various households; that these dairies engaging members of the defendant Union also deliver milk to various stores located within the City of Chicago and its
74 environs. The defendants, jointly and severally state that they have no knowledge of the combined capitalization of the dairies enumerated in paragraph Thirty-Second of this complaint, and for lack of such information neither admit nor deny the same, but demand strict proof thereof.

Defendants, jointly and severally, further deny that there is an uninterrupted stream and flow of interstate commerce by reason of the fact of the transportation of raw milk from other states into the State of Illinois and more particularly state that when the raw milk being transported from various other state is delivered to its final destination in the City of Chicago at the various dairies' plants located therein, the said raw products are taken from their original containers and put into tanks located within the said dairies; that thereafter the raw milk is processed and manufactured into saleable articles such as milk, cream, butter, cheese and other dairy products and sold to householders and stores located in the City of Chicago and its environs, all within the State of Illinois; that by so

doing, the newly manufactured articles become purely intrastate articles in character.

Nineteenth: These defendants, jointly and severally, deny all of the allegations contained in Paragraph Thirty-Third of the complaint.

Twentieth: These defendants, jointly and severally, deny all of the allegations contained in paragraph Thirty-Fourth of the complaint.

Twenty-First: These defendants, jointly and severally in answer to paragraph Thirty-Fifth of the complaint, deny that the picketing of said stores by the defendant Union is not peaceful picketing pursuant to a legitimate Labor dispute, and state the fact to be that the picketing is at all times peaceful for the purpose of advertising a legitimate labor dispute. Defendants, jointly and severally, deny all of the other allegations contained in the said paragraph.

Twenty-Second: These defendants, jointly and severally, deny all of the allegations contained in paragraphs Thirty-Sixth to Fiftieth, both inclusive, of the complaint.

75 Twenty-Third: These defendants, jointly and severally in answer to paragraph Fifty-First of the complaint, deny all of the allegations contained in said paragraph.

Twenty-Fourth: These defendants, jointly and severally in answer to paragraph Fifty-Second of the complaint, deny the allegations contained in sub-paragraph First of Paragraph Fifty-Second; these defendants deny any unlawful conspiracy, confederacy, combination or agreement as to the various acts described as alleged on pages 40 A to 40 G, inclusive. The defendants state that they have no knowledge or information as to the other allegations contained in said paragraph, and for lack of such information neither admit nor deny, but demand strict proof thereof.

Twenty-Fifth: These defendants, jointly and severally in answer to paragraphs Fifty-Third to Fifty-Eight, both inclusive, deny all the allegations contained in said paragraphs.

And for further defenses these defendants, jointly and severally, state that:

Twenty-Sixth: That the Milk Wagon Drivers' Union of Chicago, Local 753, International Brotherhod of Teamsters, Chauffeurs, Stablemen and Helpers of America, is a labor organization, that is, as unincorporated association at common law of natural persons who, on the 15th day of September, 1902, entered into articles of association commonly

known and denominated as "By-Laws of the Milk Wagon Drivers' Union", and such articles of association have been subsequently entered into by such members of the Union who elected to become associated therewith from time to time. The members of the said Union are engaged in the milk craft or industry and are commonly denominated as milk wagon drivers who are employed by dairies in the City of Chicago, Illinois, to sell and deliver pasteurized milk, pasteurized cream and other dairy products. The so-called milk wagon drivers, who are some times hereinafter referred to as "retail route men," make deliveries of pasteurized cream and milk to customers of their employers and their activity is confined exclusively to the County of Cook and such drivers work for a fixed and stated compensation, hereinafter more particularly described.

76 Twenty-Seventh: That the following named defendants are members of the defendant labor organization and occupy the following respective official capacities:

Robert G. Fitchie, is and has been president since 1909;

James Kennedy, is and has been vice-president since 1910;

Fred C. Dahms, is and has been recording secretary since 1928;

Steve C. Sumner is the secretary-treasurer, and has been affiliated with the defendant labor organization since its inception;

F. Ray Bryant, is and has been a trustee since 1917;

Alvin F. Richards, is and has been a trustee since 1907;

Joseph L. Patterson, is and has been a trustee since 1908.

Twenty-Eighth: That during the year 1902 the hours of those engaged in delivering milk commenced at about midnight and some time continued until seven o'clock the next evening. Such milk wagon drivers were paid a wage averaging from $9.00 a month to $12.00 a week, and were forced to sleep in haylofts where the horses were kept and to attend to the care of the horses. For the purpose of bettering the conditions existing in the milk craft and standardizing the hours of employment, procuring living wages for milk wagon drivers, and in general to secure the benefits resulting from trade unionism, the said defendant association was formed. From an organization of some three hundred individuals in 1902, it reached its peak in 1931 when some seven thousand members were associated therewith. The association is a division of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of

America, and by reason thereof an affiliate of the American Federation of Labor, the parent labor union. From its inception to the present time the defendant has entered into collective agreements commonly known as wage scale contracts with divers dairies in the County of Cook who are employers of milk wagon drivers. These wage scale contracts have been evolved since the inception of the defendant association, and the weekly wage scales required under the terms of said contracts have been variable and have
77 advanced in successive stages from $15.00 per week in 1905 until $35.00 per week was required in 1919 and a vacation of two weeks with full pay by the employer allowed. In 1921 the wage scale was advanced to $41.00, based upon a six-day week, and since December 1, 1936, the scale has been $45.00 per week.

Twenty-Ninth: That the plaintiffs, Lake Valley Farm Products, Inc., a corporation, and Josef Wagner, doing business as Wagner Dairy Products, in the course and conduct of their business, sell some of their milk and cream purchased, pasteurized, bottled and sold by them to distributors or persons commonly called vendors, that is persons, firm or corporations owning or operating trucks or conveyances who purchase their milk and other dairy products from the plaintiff dairies at their various plants in Chicago, Illinois.

Thirtieth: That the plaintiff dairies in the course and conduct of their business sell some part of their milk and cream and other dairy products directly to the consuming public by and through milk wagon drivers acting as employees on behalf of plaintiff dairies.

Thirty-First: That the plaintiff dairies, in the course and conduct of their business, sell some part of their milk, cream and other dairy products to the storekeepers and owners of stores with the intent that these storekeepers and owners of stores sell this milk and other dairy products to the consuming public.

Thirty-Second: That there are approximately one hundred and fifty dairies in the County of Cook engaged in the business of processing, pasteurizing and selling pasteurized milk, cream and other dairy products, and that a majority of the said dairies have entered into Articles of Agreement with the defendant Union to employ members of the defendant Union or those, who within thirty days from the date of employment, will become such for the purpose of delivering milk and cream to the vendees and consignees of the dairies in the County of Cook, and under the terms

of such Articles of Agreement, the parties thereto agree to the following, amongst other things:

78 That the hours for delivering milk are divided into two periods, one designated as the summer period commencing on the third Sunday is June, and the other designated as the winter period commencing five days before Labor Day. During the summer period drivers may deliver milk any time in the morning, but not past twelve o'clock noon, and all delivery wagons must be off the street by one o'clock P. M. During the winter period no wagon is permitted upon the street before seven o'clock A. M., nor any deliveries of milk to customers before eight o'clock A. M., excepting in a certain portion of the County of Cook where the trade may be supplied at any time during the morning, but not past twelve o'clock noon; that all employees coming under the provision of the Articles of Agreement for a period of fifty-two weeks service with any one firm shall be entitled to two full weeks vacation with pay, or if at the end of the fifty-two weeks such driver resigns or is discharged, in lieu of a vacation, the equivalent of two weeks pay shall be paid to him; that only one delivery of milk shall be made daily excepting the right to make occasional special deliveries to the wholesale trade; that on Sunday and all legal holidays excepting Lincoln's and Washington's birthdays, all wagons must be off the street by eleven o'clock A. M., and on Labor Day by ten o'clock A. M.; route foremen, route inspectors, route men, truck drivers, helpers, extra men and special delivery men shall become members of the Union if they spend fifty-one per cent of their time driving; that the wage scale required to be paid in the terms of the Articles of Agreement is as follows:

	Per Week	Per Day
Retail route men	$45.00	$7.50
Inexperienced men	44.00	7.33
Route foremen	52.00	8.67
Auto trucks (night work)	50.00	8.33
Auto trucks (day work)	49.00	8.17
Truck drivers (night work minimum)	46.00	7.67
Auto drivers (3 and 4 horse teams, nights)	48.00	8.00
Truck drivers (day work)	44.00	7.33
Special and extra men	44.00	7.33
Wholesale drivers (not receiving commission)	49.00	8.17
Wholesale drivers (receiving commission)	46.50	7.75
Assistant route foremen	50.00	8.33

79 Drivers shall be entitled to pay for six-day week, and in the event that it is impossible for such driver to get a day off each week, he shall be entitled to receive one day extra pay at the prevailing rate of wages. In addition to the wage scale, all drivers who are classified as retail route men shall receive a commission of seventy-five cents per hundred over a base of thirteen hundred thirty-three (1333) points per week; in cases of inexperienced milk wagon drivers, the first thirteen weeks the same schedule of wages shall be paid them less one dollar per week. A six-day week route shall be figured on a basis of eleven hundred forty-two (1142) points per week. A point of goods shall consist of one quart of milk, or two pints of milk, or four half pints of milk, or three one-third quarts of milk, or one quart of skim, one-half pint or two gills of cream, one quart of buttermilk. Eight hours shall constitute a day's work for night men and ten hours a day's work for day men. All truck drivers not specifically classified shall receive $45.00 er week for ten hours work per day.

Thirty-Third: That none of the vendors of their employees and none of the employees of the plaintiffs who engage in similar duties as those pursued by members of the defendant association, are members at present of the defendant labor union. That the following wages are paid to various employees or vendors of plaintiff dairies engaged in the pursuit of delivering milk, who would be classified under the provisions of the Union's Articles of Agreement respecting wage scales previously set forth as retail route men at differing rates as follows:

Truck drivers	$20.00 per week
Helper	15.00 per week
Retail route men	25.00 per week
Helper	1.50 per day
Retail route men	30.00 per week
Helper	1.50 per day
Helper	15.00 per week
Helper	20.00 per week
Truck driver	20.00 per week

Thirty-Third: That none of the retail route men of plaintiffs' dairies nor any of the employees of the vendors of plaintiffs' dairies engaged as helpers or in performing functions of retail route men, are paid any commission other than the fixed compensation above set forth. That
80 the average earning of the plaintiffs' vendors is approximately $15.00 per week for a seven day week.

That the plaintiff dairies hire and employ milk wagon drivers for wages lower then those paid by the majority of the dairies in the County of Cook, Illinois.

Thirty-Fourth: That since the inauguration of the so-called vendor system by plaintiff dairies, many retail route men who were members of the defendant Union and who were employed by various dairies in the County of Cook, have lost their jobs because of the plaintiff dairies so-called vendor system, and that such competition had a tendency to unfairly diminish the amount of trade enjoyed by the dairies employing Union help. Many of the so-called retail route men, upon being relieved of their duties or discharged from employment by dairies because of the unfair competition by the vendor system adopted by plaintiff dairies, have withdrawn from membership of the defendant Union and by virtue of economic pressure have become affiliated as employees with either vendors, or as vendors engaged in the purchase and sale of milk and cream pasteurized by the plaintiff dairies at wages much lower than those paid to members of the defendant Union doing similar work. Others, not being able to secure other employment have become the subjects of relief and are existing upon the charity and contributions of relief payments by the defendant Union. These two conflicting systems have resulted in the demoralization of the employees of the milk craft.

Thirty-Fifth: That the so-called vendors of plaintiff dairies and their respective employees and the employees of the plaintiff dairies herein do not adhere to the schedule of hours adopted and maintained by the defendant Union, nor do they adhere to any of the provisions contained in the so-called Articles of Agreement entered into between the various dairies and the defendant Union.

Thirty-Sixth: That since the inauguration of the vendor system the membership of the defendant Union has declined, and that at the present time its constituent membership is in the neighborhood of five thousand men, most of which decline is caused by the vendor system of milk delivery including employment of underpaid employees used by the plaintiff dairies.

81 Thirty-Seventh: That the defendant Union, in order to secure and fix conditions of employment and a scale of wages commensurate with that in force by virtue of the contractual relationship with the dairies employing members of the defendant labor organization and to secure to its members the rights created by the Articles of Agreement previously set forth has undertaken to unionize the

entire milk craft or milk industry in the County of Cook and among other things, to require those employing the so-called vendor system to engage the so-called vendors as retail route men, and to engage such vendors' employees as direct employees of the dairy and to pay said vendors and their employees a fixed and determined weekly salary and to adhere to the other conditions of employment as maintained by the defendant organization; and as one step in furtherance of this end, the said Union, its officials and members have, commencing with April 26, 1938, posted in front of various stores in the County of Cook engaged in the sale of milk originally pasteurized and bottled by the Plaintiff dairies, certain of its constituent members who patrolled back and forth in front of said stores carrying a placard or banner having inscribed therein the legend: "This milk store is unfair to Milk Wagon Drivers' Union, Local 753—I. B. T. Affiliated with the A. F. of L." that such patrolling and picketing have been carried on peacefully and without violence, and that in all instances only one person at a time patrolled back back and forth in front of stores and was relieved at certain hours by another person who carried on the said patrolling; that the instructions given to such persons patrolling or peacefully picketing by the officers of the defendant Union have been not to speak or carry on any conversation with any other person or persons in front of the said premises, nor to interfere with the orderly course of business of the said stores, except to patrol back and forth with the said placard as previously stated.

Thirty-Eighth: That there was no interference with the plaintiff dairies' business by the defendant Union, or any of its agents or members at their plants in processing the milk and dairy products they had purchased.

82 Thirty-Ninth: That there was no interference with the plaintiff dairies business in their sale to the vendors (plaintiffs' vendors) when they came to plaintiffs dairy plants to purchase the milk and other dairy products.

Fortieth: That the diminution of the requirements of the plaintiff dairies and any resultant loss from the attempt by the defendant Union to unionize the milk craft is not a direct restraint upon the said business of the plaintiff dairies, but only incidental, remote and indirect thereto.

Forty-First: That it was not and never has been the intent of the defendant Union or any of its constituent members or officers to restrain or monopolize, in whole or in part, any of the commerce carried on by the plaintiff dairies.

Forty-Second: That the defendant labor union has never in any way participated in the determination of the retail prices of pasteurized milk and other dairy products in the County of Cook and its environs, and that the various prices and price levels are determined by the economic laws of supply and demand without advice, consultation or suggestion of the defendant labor Union.

Forty-Third: That the defendants and each of them state that on September 13, 1902, appreciating that every improvement in the condition of working people is accomplished by the efforts of organized labor, and believing that the welfare of the individuals engaged in the milk industry could best be protected and advanced by their united action, a group of persons engaged in such craft did organize the Milk Wagon Drivers' Union of Chicago, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, affiliated with the American Federation of Labor and thereafter continued to organize all the workmen engaged in the milk industry, to educate them in cooperative movements which tended to benefit the craft and to impress upon the constituent membership the necessity that in all their business dealings with the public and with each other, they should always honestly, soberly and intelligently conduct themselves; that the said Union nevertheless limited and circumscribed their jurisdic-
83 tion over only such persons as are engaged in the craft in Cook County, Illinois. By diligent application and as the benefits of trade unionism became more rapidly known and progressed, so also did the said Union grow until at the time of the filing of the Bill of Complaint in this cause, it had in excess of five thousand members; that in seeking the betterment of conditions in the craft, said Union at all times insisted that employers shall pay to employees a fair and living wage, to provide health facilities and refrain from imposing burdensome and unreasonable hours of labor. Said Union also provided for the payment of sick and death benefits to its members in order that it might make them secure in case of sickness, and their families free from want in case of death; that at the time of the filing of the Bill of Complaint in this cause practically all of the persons and firms engaged in delivering milk in the County of Cook, Illinois, had become unionized and have entered into agreements with the said Union in respect to wages paid to employees and the undertaking of other conditions consistent with the welfare of the said employees; that there are some institutions in the milk craft

who have employees engaged in delivering milk and who have desisted from unionizing such employees, amongst others, the Lake Valley Farm Products, Inc., a corporation, and Josef Wagner, doing business as Wagner Dairy Products. The said plaintiffs have failed to recognize and pay to such employees the schedule of wages promulgated by the defendant Union as a fair, reasonable living wage to employees, and have persisted in underpaying their said employees, and in other matters and in other manners defying the said defendant Union and its officials; that whenever a person was discharged from employment by a unionized dairy, or forfeited membership in the Union, he was immediately employed by the said plaintiffs, Lake Valley Farm Products, Inc., a corporation, and Josef Wagner, doing business as Wagner Dairy Products, for the purpose of securing the business theretofore enjoyed by such employee's former master, and to take away the benefits resulting from the good-will built up by the said master over a period of time.

84 That in order to unionize the employees employed by the said Lake Valley Farm Products, Inc., a corporation, and Wagner Dairy Products, the said defendant Union and its officials did, on divers times, cause certain members of the Union to walk in front of places patronizing the plaintiffs, Lake Valley Farm Products, Inc., a corporation, and Joseph Wagner, doing business as Wagner Dairy Products, carrying a placard bearing the following legend: "This milk store is unfair to Milk Wagon Drivers' Union of Chicago, Local 753." The unfairness of the said respective stores consisted in the acceptance, deliveries and purchase of milk from those members of the craft who were not unionized, and that each of the said persons carrying such placards were specifically warned at all times to desist from any unlawfulness, and merely to advertise and peacefully bring to the knowledge and attention of the public at large, and the friends of trade unionism, the unfairness of the said Lake Valley Farm Products, Inc., a corporation, and Josef Wagner, doing business as Wagner Dairy Products, and the said stores.

Forty-Fourth: That the defendant Union and its constituent members have at all times refrained from using any coercion that might be unlawful, or from creating a secondary boycott, but on the contrary have merely exercised their right to freedom of speech in calling the attention of the public to the true facts. Those engaged in other industries conveying merchandise in the County of Cook

to sell to customers of the Lake Valley Farm Products, Inc., a corporation, and Josef Wagner, doing business as Wagner Dairy Products, are in a large part trade unionists, being sympathetic with the purpose of trade unionism, and having been advised of the unfairness of the respective stores and the Lake Valley Farm Products, Inc., a corporation, and Josef Wagner, doing business as Wagner Dairy Products, their said drivers and vendors have voluntarily refused to deliver other commodities, but that such voluntary refusal on their part was not by reason of any intimidation, threat or coercion by the defendants, but in sympathy with the efforts of the defendant Union to organize the craft and unionize it, including the employees of the plaintiffs.

85 Forty-Fifth: That the issues raised by the Bill of Complaint have already been adjudicated and that the matter is res adjudicata or there is now an estoppelly verdict on the plaintiffs in that on or about September 19, 1934, a bill similar to plaintiffs' present complaint was filed by the Meadowmoor Dairies, Inc., a corporation, in the District Court of the United States, for the Northern District of Illinois, Eastern Division, a bill in equity against said defendants, Milk Wagon Drivers' Union of Chicago, Local 753, Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Albert C. Richards, Joseph L. Patterson and David Riskind, and others, seeking to enjoin the same matter which is the subject of the Bill of Complaint herein; that the said cause was referred to the Honorable John P. Barnes, one of the Judges of the said Court, in said cause presiding, and subsequently was referred to the Honorable George E. Q. Johnson, one of the Masters in Chancery of said Court for the purpose of taking evidence therein and making findings of fact and of law therein. That the said Master in Chancery reported that the Bill of Complaint should be dismissed because the said Master in Chancery reported as follows:

A. That the cause involved persons engaged in the same craft or industry, namely the milk industry.

B. That the cause involved persons having a direct or indirect interest in the same industry, namely, the milk industry.

C. That the cause involved conflicting interests in a labor dispute of persons participating therein or interested therein.

D. That the dispute is a controversy concerning terms and conditions of employment.

E. That the dispute is a controversy concerning an association of persons, namely, The Milk Wagon Drivers' Union of Chicago, Local 753, in seeking to arrange terms or conditions of employment for those engaged in the same craft.

F. That the plaintiffs have failed to make every reasonable effort to settle such dispute either by negotiations or with the aid of any available governmental machinery of mediation or voluntary arbitration.

Forty-Sixth: That on or about January 21, 1935, upon the filing by the said Master in Chancery of his report recommending that the said Bill of Complaint be dismissed and that the subject matter thereof involved a labor
86 dispute, the Honorable John P. Barnes, ordered that the Bill be dismissed for want of jurisdiction on two grounds:

(1) That the matter did not involve interstate commerce, and,

(2) That the Norris-LaGuardia Act prohibited the granting of any injunction in a labor dispute of this nature.

That on March 23, 1932, an Act was passed by the Federal Congress called the "Norris-LaGuardia Act" (Title 29, Section 101 to 115, U. S. C. A.) and is now in full force and effect.

Forty-Seventh: That a labor dispute existed and still exists between the plaintiff dairies and the plaintiff Union and the defendant Union and the members thereof with respect to wages, terms and conditions of employment; that this cause involves a dispute between persons who are engaged in the same craft or industry, namely, the milk industry, that this cause involved a dispute between persons having a direct or indirect interest in the same industry, namely, the milk industry; that this cause involved conflicting interests in a labor dispute of persons participating therein or interested therein and that the dispute involved in this cause is a controversy concerning terms and conditions of employment.

Defendants further state that the welfare of the defendants and the members of the defendant Union are directly related and connected with the activities and manner of conduct of business as carried out by the plaintiff dairies and the manner or organization by and the alleged contract entered into by and between the plaintiff Union and the plaintiff dairies. Defendants further state upon information and belief that the direct and immediate result of the negotiations between plaintiff Union and plaintiff dairies

would tend to lower the wages and to adversely and injuriously affect the terms and conditions of employment under which the members of the defendant Union are now engaged in their employment by various dairies throughout Chicago, generally referred to as "Union dairies."

The defendants further state that in the event plaintiff Union and plaintiff dairies successfully carried on their activities so that the wages of the employees of plaintiff dairies are kept at the low level previously described
87 in this answer, and the terms and conditions of employment are kept according to the description previously given in this answer that in the future further disputes will arise between members of defendant Union and their employers now commonly referred to as "Union dairies." That the members of the defendant Union have a direct or indirect interest in the conduct of the plaintiff dairies in operating their business in such fashion so as to cause and require their employees to accept wages lower than the amounts received by the members of the defendant Union from their employers, commonly referred to as "Union dairies" engaged in similar work, that in the event the plaintiff dairies are permitted to carry on their business in such fashion as to pay to their employees the wages previously mentioned in this answer, the wages received by the members of the defendant Union from the so-called Union dairies for similar work will be substantially reduced and lowered and their hours of employment will be substantially increased and lengthened and various other items previously described in the so-called Articles of Agreement between the defendant Union and the "Union dairies" will be changed to the injury and the detriment of the members of the defendant Union, and that the social and economic welfare of the members of the defendant Union will be adversely affected by the activities and conduct of both the plaintiff dairies and the plaintiff Union.

Forty-Eighth: That within the meaning of the provisions of the Norris-LaGuardia Act a Labor dispute existed and still exists between the plaintiff dairies and plaintiff Union and the defendant Union and the various members thereof with respect to wages, terms and conditions of employment. That the plaintiffs have failed to comply with the provisions of said Norris-LaGuardia Act in that plaintiffs have failed to serve notice upon the public officials of the City of Chicago and the County of Cook and State of Illinois charged with the duty of preserving law and order requesting said public officials to assist the plaintiffs in maintaining law and order; and further that the plaintiffs

have failed to comply with the provisions of said Statute with regard to first exhausting all possible remedies whether by arbitration or otherwise before appearing
88 in a court of equity and requesting the issuance of an injunction; and further that under the provisions of said Statute a full hearing must be had by the court with testimony taken under oath subject to cross-examination and to such testimony and opposition as the defendant thereto may wish to offer.

Wherefore these defendants and each of them pray that the said cause be dismissed for want of jurisdiction or in the alternative that said Bill of Complaint be dismissed for want of equity and that these defendants and each of them obtain their reasonable costs in this behalf most wrongfully sustained by them.

Milk Wagon Drivers' Union of Chicago, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association;
Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson, jointly and severally as defendants in the above entitled cause.
By: David A. Riskind,
Their duly authorized agent and attorney.

State of Illinois, } ss.
County of Cook. }

David A. Riskind being first duly sworn upon oath, deposes and says that he is the duly authorized agent and attorney for the defendants mentioned above; that he has read the foregoing answer by him subscribed, knows the contents thereof except to such facts as are alleged upon information and belief and that he verily believes the same to be true, and that all the other allegations are true in substance and in fact according to his knowledge thereof.

David A. Riskind.

Subscribed and sworn to before me this 27th day of May, 1938.

Ruth Finsed,
(Seal) *Notary Public.*

359 And on, to wit, the 9th day of February, 1939, there was filed in the Clerk's office of said Court a certain Amended Condensed Statement of Testimony, in words and figures following, to wit:

Filed Feb. 9, 1939. 360 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—16073) * *

CONDENSED STATEMENT OF TESTIMONY.

HARRY ENTIN, a witness on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

My name is Harry Entin. For last four years I have operated a grocery store at 4833 N. Kedzie Avenue. Until three days ago I bought my dairy supplies from Wagner Dairy, but now I buy from Silvercup Dairy. The Milk Wagon Drivers Union picketed my store for thirteen days carrying signs saying "Unfair to Local Drivers—. I think 753, it said". All delivers into the store were stopped. I had to pick up all commodities myself. Because of the pickets my sales dropped 15 to 25 per cent. My windows were broken three times while I was selling this cut rate milk. I had displayed a sign of the Amalgamated Dairy Workers Local Industrial Union No. 819, but the new dairy made me remove it. The Silvercup Dairy paid for all the Wagner Milk I had in the store and removed it.

Cross-Examination by Mr. Riskind.

The driver from the Wagner Dairy gave me the Amalgamated Union sign. I am not a member of that union.

MAE SITKO, a witness on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I operate a delicatessen store at 4345 Fullerton Street, selling dairy products of Wagner Dairy. On May 3, 1938,
two men came into my store, saying they represented
361 the Milk Wagon Drivers Union and that unless I put
in Union Milk that they would picket and ruin me. These men then started picketing and are still doing so in front of my store. The picketing has chased away my customers and has had quite an effect on my business. The pickets bang on my windows with a piece of wood. Sev-

eral milk drivers and pickets congregated in front of my store with the pickets and I had to call the police who made them move on. They have stopped deliveries into my store. I am satisfied with Wagner Milk and would like to continue selling it. I displayed a sign of the Plaintiff Union in my window.

Recross Examination by Mr. Riskind.

Wagner Dairy delivered milk to my store after eight o'clock in the morning.

MAUDE CADDLE, a witness for the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I own and operate a small grocery and delicatessen store. I sell dairy products of the Wagner Dairy. On May 11, 1938, a representative of the Bowman Dairy Company came into my store and asked for the Amalgamated Union sign I had in my window and offered to buy it.

Cross-Examination.

I got the Amalgamated Union sign from the Wagner driver.

JOSEPH L. BAZIK, a witness for the plaintiff, testified as follows:

Direct Examination by Mr. Seelig.

I am in the delicatessen business at 4411 N. Kimball Avenue, selling dairy products of Lake Valley Farm Products. I originally sold milk of Bowman Dairy and discontinued selling their milk in August 1937. When I did this I was picketed for two days. I wanted both Bowman's milk and cut-rate milk. For a week I did this, but two men from the Milk Wagon Drivers Union came in and said if I didn't stop selling Lake View milk they would picket my store and stop all deliveries. I refused to quit and they picketed for three days. Mr. O'Connor of the Milk Wagon Drivers Union came in and I told him I had to have cut-rate milk. I called Bowman Dairy and asked them to leave milk for

the next morning. They did not do so. Mr. O'Connor called off the pickets on Friday afternoon. Sunday night my windows were smashed. My windows were smashed again the last part of April, 1938.

362 CARLA FISCHER, a witness for the plaintiffs, testitified as follows:

Direct Examination by Mr. Seelig.

I own a grocery, delicatessen and milk store at 4008 Bell Avenue. Until a week ago I bought milk and dairy products from Lake Valley Dairy. On May 17, 1938, our windows were smashed. I had an Amalgamated Dairy Workers Union sign in my window when the windows were broken.

Cross-Examination by Mr. Riskind.

The Lake Valley Dairy drivers delivered milk to my store at eight o'clock in the morning. The Lake Valley Dairy driver gave me the Amalgamated Dairy Workers Union sign.

JOSEPH SPRY, a witness for the plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I conduct a grocery, milk and ice cream store at 1803 W. 51st Street, selling dairy products of Lake Valley Farm Products. On May 7, 1938, two men came in my store and said that they saw I was selling cut-rate milk. They asked me if I would like to have my windows broken and told me to take the milk price sign out of my window. I removed the price sign.

JOSEPH P. MOORHATCH, a witness for the plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I own a delicatessen, food and milk store at 163½ W. North Avenue, selling dairy products of Western-United Dairy. I have been buying from Western-United since I

was picketed two weeks ago. Before that time I bought from Wagners Dairy Products.

"Q. —And will you tell the Court what the circumstances were in connection with your changing from Wagner to Western-United?—

A. I don't care to suffer more consequences."

I was picketed on April 22, 1938, until the next morning. The delivery of supplies into my store was stopped. Western-United Dairy took out the Wagner milk, and paid me $15.00. I had been selling Wagner milk at cut-rate prices and I am now selling milk at higher prices. I would like to sell Wagner Milk.

363 GENEVIEVE ST. PIERRE, a witness for the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I own a delicatessen store at 6250 S. Maplewood Avenue. I sell dairy products of Lake Valley Farm Products.

Plaintiffs Exhibit 1 (Sign of Amalgamated Dairy Workers Union, Local 819), marked for identification. I displayed an Amalgamated Union card in my window. On Monday of this week a driver came in and said they would picket my store if I didn't change dairies.

MARGARET BALIKA, a witness for the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I conduct a food store at 545 W. 103rd Street, Chicago, selling dairy products of Lake Valley Farm Products. I display the Amalgamated Dairy Union sign. I had a sign in my window for 8½c milk and two men came in and asked me to take the sign down and that I should sell the milk just like they do at 11½c. Because I didn't want anything to happen I took the sign down.

SIEGFRIED WEISS, a witness for the plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I am president of the Plaintiff, Lake Valley Farm Products. I have been in the dairy business in Chicago for nine years. I started as a driver, was in the sales department and now am managing. I have had experience pasteurizing, bottling and distributing. Lake Valley Farm Products, Inc., is an Illinois Corporation. Its pasteurizing plant is located at 5330 S. Western Avenue, Chicago, Illinois. The corporation employes about 90 persons and handles about 45,000 pounds of milk daily. The products of the dairy are distributed in and about Chicago. The dairy building and land is valued about $80,000 and machinery about $65,000 in addition to good will.

The dairy receives its milk supply daily from the Lake View Cooperative of Watertown, Wisconsin and also from the Slinger, Wisconsin plant. The Watertown plant receives its milk from the neighborhood surrounding its plant. The milk is brought to the Chicago plant in au-
364 tomobile tank trucks and we receive two to three tanks daily. Cream comes in 10 gallon cans by automobile truck from Watertown and Slinger, Wisconsin. The trucks carrying cream to Lake Valley Farm Products also carry cream to other Chicago dairies. I have been employed by other dairies in Chicago, and have purchased milk for my own and other dairies. About 55 to 60 per cent of the milk that is distributed in Chicago comes from outside the State of Illinois. 70 to 80 per cent of the cream is separated from milk produced in other states. It comes from Wisconsin, Indiana, Michigan; cream comes as far as 200 miles from Chicago. It is a frequent practice for a dairy to obtain its milk supply from both Illinois and Wisconsin. There is no way of distinguishing Wisconsin bottled from Illinois bottled milk. The milk is received from the tank trucks and pasteurized. Pasteurizing takes forty-five minutes and then it is cooled, filled and capped. Then it is put in the ice box and shipped out. Less than twelve hours separate the receiving from tank trucks to distribution to the retail stores.

Our milk is distributed by men who own their own trucks and they buy the milk wholesale at our plant for cash and they distribute it to the stores; the stores take an average of eight to ten cases each; we also have about twenty-five

men that sell retail; all of these men are known as "vendors". They receive no salary. They are not on our payroll; are not employees; we have no control over them. The vendors pick up the milk at the dairy from 5:00 o'clock to 8:00 o'clock in the morning and return from eleven to two o'clock. The average wholesale vendor distributing to stores nets between $50 and $75 a week after all expenses.

The vendors distribute an average of 75 to 100 cases daily in three and one-half to five hours. A case of milk is twelve quarts and a quart is referred to as a "point" by dairy men. The average retail route of a dairy distributes a daily average of about 199 points by house to house delivery, requiring six to seven hours. Our vendors work six days each week. On the seventh day a helper handles the route. These helpers are young men just out of school, about 18 or 19 years old.

The stores distributing our milk are generally grocer-
365 ries, delicatessens selling milk and cream, and sometimes ice cream. About 400 stores sell our products. There are about between 2500 and 3000 stores in Chicago selling cut-rate milk. About 40% of the milk is sold in stores.

The cost of delivering a point of milk on a retail route (to the doorstep of the consumer) assuming a drivers' wage of $48.00 per week, is over 4c. The cost of delivering a point of milk on a wholesale route (to milk stores) assuming $48.00 weekly to the driver, is about ¾c. the generally prevailing price of retail doorstep delivered milk in Chicago, is 12c; the cut-rate price in milk stores varies from 8½c to 10c. Nine and a half-cents is the average. Milk bottles vary in cost from 5½c to over 6c each. On a retail route the average bottle makes only about eight trips before it is lost. On store deliveries where no bottle deposit is charged the average is only about three trips. Our dairy charges a two cent bottle deposit. The Milk Bottle Exchange charges up to 2c each to the dairy to recover its lost bottles. Our bottles make about 18 trips and we save about ½c on each trip. The Lake Valley Farm Products does not own or is not interested in the ownership of any of the distributing milk stores.

Cut-rate milk has been sold in Chicago since 1932 or 1933. After the depression started the people were given a chance to buy milk at cash and carry at a savings of about 2c a quart. There is a need for this system. The experience of the cut-rate dairies and milk stores has been characterized by the breaking of windows, stores burned up,

bombings, stench bombs thrown into stores, stopping of all deliveries in the stores, unlawful picketing and stopping and molesting of customers.

Lake Valley Farm Products was bombed twice. One of our delivery trucks was dumped into the river, a truck driver was kidnapped and the truck burned.

The Edgewater Dairy, another independent cut-rate dairy, was bombed in 1934.

During the past five years I saw dozens of stores selling the products of this dairy with broken windows.

In the case of the Blue Ribbon Dairy, another cut-rate dairy I saw their men who had received bruises. I observed broken windows at stores selling Blue Ribbon cut-rate 366 milk.

During the past five years I observed broken windows at stores selling Meadowmoor Dairy cut-rate milk and the trucks of this dairy turned over. This last happened in May, 1938. During the last five years, I have seen broken windows at stores selling the cut-rate dairy products of Wagner Dairy and Cloverdale Dairy.

Over one hundred stores selling Lake Valley products have been picketed. Quite a number of these stores have been picketed in the last thirty days, by the Milk Wagon Drivers Union, Local 753. As a result of picketing at the store at 93rd and South Park Avenue, the store lost 80% of its business.

The members of the Milk Wagon Drivers Union are employed by the dairies distributing the majority of the milk in Chicago. If we ceased distributing independent milk, the Milk Wagon Drivers Union would distribute all the milk. During the past thirty days I have observed that our men have put up signs of the Amalgamated Dairy Workers Union in the stores selling our product. During this period we have lost quite a number of stores. During this time I observed pickets at the store at 43rd and Wood Street, at 93rd and South Park, at 8140 Exchange Avenue, at least thirty to fifty stores where I observed pickets. I saw broken windows within the past week at 3810 Lake Park; also at 2547 W. 51st Street. The picketing is carried on at this time. Fifteen to twenty stores have been lost by us in the past thirty days. This is an abnormally large loss of stores. I can not estimate the large number of retail patrons who have discontinued purchasing our products because of violence or picketing.

THOMAS J. DARCEY, a witness for the plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I live in Watertown, Wisconsin. I am a farmer and I am secretary of the Plaintiff Lake View Cooperative. The Lake View Cooperative is a farmer's cooperative dairy corporation, organized under the Wisconsin Agricultural Act. We operate a plant at Watertown, Wisconsin. The value of the plant is about $35,000.00. The milk is all
367 produced in Wisconsin within a radius of twenty miles of the plant. The milk is brought to the plant and is weighed, sampled and tested, run over the coolers and sent to Chicago in automobile tank trucks. The amount we ship into Chicago varies according to our orders, up to fifty or sixty thousand pounds daily. In addition to milk shipped to the Lake Valley Farm Products, we also sell milk to the Lawndale, Ogden and Farmers Dairy. The milk shipped to Lake Valley is indistinguishable from milk shipped to other dairies. We also ship cream to Lake Valley. About one half of our supply goes to Lake Valley. I am familiar with milk distribution in Chicago. About forty per cent of all the bottled milk sold in Chicago, is produced in Wisconsin, and in the case of cream about 75%. Milk is shipped into Chicago from Michigan, Indiana, Wisconsin and Iowa.

Cross-Examination by Mr. Riskind.

We do not process or pasteurize the milk in Wisconsin. We ship the milk as raw milk.

JOHN E. IGOE, a witness for plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I distribute the products of Blue Ribbon Dairy. I am Vice President of the Amalgamated Dairy Workers Local Industrial Union, No. 819. I own an automobile truck. I pick up milk at the dairy and then I distribute it to twelve or thirteen stores on a wholesale route. I sell about 1000 points a day. I pick up the cases of milk at about 6:00

o'clock in the morning and I am through with my work and back at the dairy at 10:00 o'clock. My net income is about $60.00 a week. I work 4 to 6 days a week. I have a helper. He is 19 years old. I pay him $30.00 a week. He works from 6 to 10 in the morning, six days a week. The Amalgamated Dairy Workers Union is affiliated with the Committee for Industrial Organization. Nicholas Kost, Jr. is president; Joseph Igoe is secretary and treasurer; Cass Zalewski is recording secretary. They all are wholesale milk vendors. Our Union takes in all unorganized dairy workers of every kind. We are an industrial union, not a craft union. The workers and vendors of Lake Valley Dairy and Wagner Dairy are members. The union started in March. We have about one hundred thirty mem-
368 bers. We have not sought any members from dairies employing members of the Milk Wagon Drivers Union; only from the independent dairies that are not organized.

Witness identifies Exhibit 2 for identification as form of union contract with dairies.

We haven't any agreement with the dairies concerning wages, hours or terms or conditions of employment as yet.

We prepare to get up certain agreements concerning wages, hours, and terms and conditions of employment. I am acquainted with many milk vendors. The average earnings of vendors for the Lake Valley Farm Products is about $50.00 a week or better. I don't know what the helpers get. I don't know if all routes have helpers. No helpers work more than six days a week. The vendors start at about 5:30 A. M. and the last one comes in at noon, the majority anywhere from 9:30 on. The average number of points on a route is 1200.

JESSE ELMER WILSON, a witness for the plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I own a grocery and milk store at 1815 N. Troy Street, selling the dairy products of Wagner Dairy Co. I sell cut-rate milk at 8½¢. On May 5, 1938, two men came into my store and said they were from the Milk Wagon Driver's Union and told me I could not sell milk at that price, and that Borden-Wieland and Bowman would not stand for it. They got pretty hostile and when I said I was going to con-

tinue selling Wagner Milk they said I would not because they were going to get Wagner. On July 27, 1937, a man named Charles Segale was erasing price signs from the inside of my windows when I returned from the market and told me I had to sell Bowman or Borden-Wieland milk. I told him I would sell what I wanted to in my store. He started an argument, called me names, struck me, and knocked me back against the shelving in the store. I picked up a rod and hit him and drove him out of the store, he swore at me and said he would bomb the store. On the night of July 30, there was a stench bomb. My windows were all broken. Charles Segale is a picket for the Milk Wagon Drivers Union. While Segale was in the store another picket was outside in the car. When I was put-
369 ting Segale out of the store he ran across the street and swore at me.

About ten days ago the same men who came in and on May 5, came back and said they were from the Drivers Union and that I couldn't sell milk at that price; that I must take Borden-Wieland or Bowman, some of their milk. Then one of the fellows pulled down a price sign at 7½¢ I had in my window and put it in his pocket. My store was picketed for five weeks a year ago last July and August by the Drivers Union. I am here in response to a subpoena; have not discussed this evidence with anyone, and have never before seen the attorney for the plaintiffs. I display an Amalgamated dairy workers Union sign in my window at this time.

Cross-Examination by Mr. Riskind.

I saw you (indicating defense counsel Riskind) in the Court rooms of Judge Caplan where I filed a complaint against Segale and Wald. It was thirty days before they issued a warrant. I made an application immediately when it happened and the desk sergeant said that the Milk Wagon Drivers Union and their lawyers were too big, and so the police would not make that warrant out. One of the men (Seagale and Wald) had a gun in his pocket. I have only seen Mr. Wagner once when I called for milk. I did not know I would testify in this case until I was served with a subpoena this morning, and I have not talked with anyone concerning this case.

SIEGFRIED WEISS, recalled as a witness on behalf of the plaintiffs testified as follows:

Direct Examination by Mr. Seelig.

The words, "Property of and filled by the Lake Valley Farm Products, Inc." appears on the bottles and cases used by our dairy. When I testified the other day that about 60% of the milk comes from outside of the state of Illinois, I was correct, figuring cream in that amount. I know of my own knowledge that Meadowmoor Dairy, Wagner Dairy, Cloverdale Dairy and Blue Ribbon Dairy have been cut rate dairies, selling milk at lower prices than delivered milk for the past few years.

Cross-Examination by Mr. Riskind.

I know how to pasteurize and can test milk. I am a graduate of the Chicago Dairy College. To pasteurize milk is to bring the milk up to a temperature of 145° and keep
370 it there for one half hour to kill bacteria. The raw milk is received at our platform in tank trucks. We have times when we pasteurize direct from the tank truck. We connect the tank right to the pasteurizer. When the milk is put in the receiving vat it is taken right out again sometimes, and sometimes it stays in for six or seven hours. Nothing is done there, except cooling. Five or six times a week we pasteurize directly from the tank trucks. This is about 15,000 gallons a week. We have between twenty and thirty thousand gallons placed in the vats per week for a period of six to 8 hours. After the milk is pasteurized it is cooled down to 35°. This takes about five minutes for one tank of 200 gallons. It does not remain in the cooler at all. It turns right over and is bottled at about 120 bottles a minute, an average of about 18,000 to 20,000 bottles a day. The bottling and sealing is one process. (Argument of Counsel appearing on pages 201-217 of stenographic report is omitted.) We pay $2.05 per hundred lbs. of milk. One hundred pounds of milk is 46½ quarts. It costs us nearly 4½¢ a quart for raw milk. The cost is one and one half cents per quart, for all expenses of pasteurizing, bottling, caps, office, overhead, investment and everything. So the total cost is 6¢. We employ no drivers. We do not own the trucks. We do not hire these vendors. They are independent contractors. I have seen helpers on your union (referring to the defend-

ant Union) trucks too. I know some of these helpers get fifty cents a day from your (referring to the defendant union) members. We have no control over the vendors. I don't know if they work six or seven days a week. Our milk is sold for 8½¢, 9½¢ and 10½¢ in the cut rate stores. We have stores that sell it for 12¢. There is no uniform price for cut rate milk. As an average 8½¢ and 9½¢.

I first learned about Local 819 when Kost, Zalewski and John Igoe, representing the union came into my office. It was a few months ago in April. They told me they were organizing, or had organized our men in the dairy and they wanted to be recognized as a bargaining party. I asked them questions. They said their purpose was to better the men's wages and hours, that we should come together and set up a wage scale. If we signed up we would work out a wage scale in sixty days. They told me that all workers were eligible for the union. It was either early in April or late March. In April they came back to have the con-
371 tract signed—about ten days later. We signed a contract. We discussed wages and hours and arranged that we would work out a scale. For the time the present wages were to stand. Mr. Kaiser is Vice-President of our dairy. Mr. Kost is a vendor of our products. I think he is a nephew of Mr. Kaiser. Kost has been a vendor for six or seven years. I think the Union dues has been paid by the men. We pay all our help in checks.

We processed approximately 1,200,000 pounds of milk in January 1938, and in December 1937, about the same amount. Our books indicate the quantity of milk sold. The vendors secure their milk supply from 4:30 in the morning and return between ten and one o'clock. We don't pay them wages. We have the vendor system. We have contracts and they are bound to the dairy. They own their own trucks and pay their own expenses. I know the amount the vendors earn from the amount of milk they take out and the profit that is made on it. They average 1½¢ per quart on 1200 quarts a day. The gross profit is $109.20 per week. The truck costs three dollars a day, leaving $88.00 net. For 1200 points they don't need a helper with our stores. That is just to help them out. The three dollars a day includes everything. It includes insurance, repairs, depreciation, gasoline. If they have an extra man for one day, that much would come off. The vendor pays us 2¢ for bottles and he gets 2¢ from the storekeepers, so the storekeeper pays any loss. The dairy takes back and credits the vendor with all unsold products.

A great deal of violence took place in 1934 and 1935 against our stores and some of our vendors. We made complaints to the police and public officials. In 1934 we complained to the States Attorney's office, to Captain Egan or Lieutenant Tracy. I didn't hear anything from it. In 1935 complaints were made again. We called them up to send Captain Tracy or Lieutenant Egan. In 1936 complaints were again made to public officials by the dairy and some stores did when there was violence. In 1936 and 1937, there was no violence to our vendors dairy, only to the stores selling our milk and we complained. In 1938 vendors trucks got stopped. No complaint was made about these trucks.

Redirect Examination by Mr. Seelig.

Acts of violence were committed to stores distributing our products during 1936, 1937 and 1938.

372 Plaintiffs' exhibit No. 4, being contract between dairy and Amalgamated Union, dated April 18, 1938, is identified.

In 1928 or 1929, I was a helper on a milk route for the Capitol Dairy. That dairy employed members of the defendant union. The wage scale then was $37.50, but I got 50¢ a day. If a driver on a route of the defendant union sells his milk at less than the prevailing price of 12¢ a quart, he would really make less than the scale of $48.00. This is a prevailing practice. Each driver sells quite a number of bottles below the set price. All milk that comes into our dairy is pasteurized and reaches the store on the same day as received.

Recross Examination by Mr. Riskind.

Both milkmen and customers have told me that milk is sold by members of the Drivers Union on routes for less than 12¢. This loss would be deducted from their wages.

JOHN IGOE, recalled as a witness on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

To my knowledge all workers of Lake Valley Farm Products and Wagner Dairy Products are members of the Amalgamated Dairy Workers Union.

Witness further identifies Exhibit 4. Plaintiffs' Exhibit 5, being contract between Amalgamated Union and Wagner Dairy Products is identified.

Our Union has members with other cut-rate dairies. For the past five years, as a vendor, I have observed the cut-rate stores, particularly on the northwest side. I have seen broken windows and pickets in front of stores. About eight days ago I had pickets in front of our stores where the windows were broken. The store sold cut-rate milk of the Blue Ribbon Dairy, that I distribute for. As far as I know all stores selling milk of Lake Valley or Wagner display the Union card of the Amargamated Dairy Workers.

Cross-Examination by Mr. Riskind.

Our Union was formed some time in March. We got our charter April 7, 1938. Before that we were organizing and had about fifty members. Our election of officers was held at the Amalgamated Union building on Ashland Boulevard and Van Buren Street, on the second floor. About seventy-five members were there. The vote was oral. None
373 of our officers receive any salary. Our office is at 11 S. La Salle Street. The Union rented this office, issued checks and paid the rent. Some time in March we were thinking of organizing and Mr. Kost, Mr. Zalewski and I went to see Mr. Slotkin. Aften that we went out and started to organize. I am a milk vendor. I consider myself an independent contractor. I know that wholesale drivers belong to 753. The Blue Ribbon Dairy has a man to take the route on the seventh day. I have to pay him if he takes my route. I pay 6½¢ for a quart of milk and pay my helper $30.00 a week. I sell to the stores at 7½¢ a quart. I sell 1000 quarts a day besides cream also. I sell 300 to 400 points of cream or better. I make 3¢ on a bottle of cream. Cream costs me 25¢ a quart and there are four points in a quart of cream. I make 4¢ profit on each quart of cream. My gross is about $16.00 a day. Insurance is 25¢ a day; upkeep on truck is about $2.00 a day, including depreciation and gas and oil. The store keeper is charged for all bottles and pays for all breakage; I have no loss. Licenses total $75.00 a year. I don't give premiums or pay any customer to secure a store. I don't know of any vendors that have ever paid for a store. I serve thirteen stores altogether. I used to serve fifteen, but I lost them on account of pickets.

Kost and Slotkin went to Washington to get our union charter. The Union did not have a treasury at that time.

I have over $500.00 of my own money in the Union. We all put up our money and got $200.00 together to go to Washington. Our Union keeps books and records at our office. We have a girl in our office from nine until five. Mr. Slotkin is our organizer. Our By-laws are kept in our office. Our dues are three dollars a month. We started collecting for May from about one hundred members. We have members with Blue Ribbon Dairy and Edgewater Dairy. As yet we have no specific agreement as to wages or hours of employment; we are working on it. The organization of our union was never discussed with Lake Valley or Wagner Dairy. Mr. Kost and Mr. Kaiser had the same address. We are organizing the independent field. We take in drivers as well as vendors. As yet we don't know the hours of employment of Mr. Wagner's drivers or salary. We will try to raise their salary if it is low.

Redirect Examination by Mr. Seelig.

Before I became active in working for this union, I
374 worked six days a week and only had a helper one day a week. Since I have been working in the union, I have less time to put in on my route and that is why I have my helper more days a week.

SIEGFRIED WEISS, a witness having testified for the plaintiffs, recalled for additional cross-examination by Mr. Riskind, testified as follows:

Our regular supply of milk is from Wisconsin; only very seldom, if we run short, and must have some extra milk, it may be possible we buy from Illinois. It would then be possible that this milk would be commingled with Wisconsin milk.

FRANK WAGNER, a witness for the plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

At present I manage Wagner Dairy Products, one of the plaintiffs. Josef Wagner, Sr., my father, is the owner of Wagner Dairy. I have been in the dairy business for twenty-five years, and have had experience in all dairy lines,

pasteurizing, testing, receiving, milk out of the country. Our pasteurizing plant is at 5407 W. 24th Street, Cicero, Illinois. It is a two story building containing pasteurizers, coolers, bottlers, bottle washers, cream separators, boiler room and milk case washer. We employ twelve men inside of the dairy, and receive about 40,000 pounds of milk daily. Wagner Dairy Products has distributed its products in Chicago, Cicero, Oak Park, Berwyn, and Forest Park for 25 years. The pasteurizing plant is valued at approximately $50,000.

Our milk is received from our country plant at Richmond, Illinois, two miles from the Wisconsin boundary line. The Richmond plant receives its milk from farmers within a radius of thirty miles. Some of these farmers have their farms in Wisconsin. The farmers bring their milk to the plant, where it is received, weighed, a sample for testing purposes is removed, is placed in a vat and runs into a cooler and brought down to 35° and from there directly into our stainless steel automobile trucks. Within two hours of the receipt from the farmers it is in the automobile trucks and on the way to our Cicero plant. That takes about one hour and thirty minutes. Our pasteurizing machinery is able to handle 16,000 pounds of milk per hour.

The milk is held at the required temperature for thirty 375 minutes. After pasteurizing the milk is run over the cooler and is bottled at once. We bottle 120 bottles a minute. Within five hours all milk received at our plant, goes out as bottled milk. We receive cream from Oregon, Wisconsin. It is shipped to us in 10 gallon cans in a refrigerator automobile truck. About 40% of all milk sold in Chicago comes from Wisconsin. About 75% of all cream sold in Chicago comes from Wisconsin. Our dairy distributes its products through 338 cut-rate stores—about 90% are in Chicago.

The contract with the Amalgamated Dairy Union was signed on the date it bears. We have no trouble with our workers. In connection with my business, I have observed the cut-rate milk stores in Chicago. These stores are delicatessens or groceries and there are also milk stores handling only dairy products, eggs, butter and cheese in addition to milk and cream. I am very familiar with the Milk Wagon Drivers Union, Local 753, and I know its officers. The defendant union accepts drivers who will go out and sell milk for twelve cents a quart.

Mr. Riskind: This is a craft union having by-laws and a constitution and they speak for themselves, and in an answer of that type we are — — —.

Our dairy has been a cut-rate dairy since 1930. The cut-rate dairy gives the public a saving of two cents a quart. When the wagon driver delivers the milk to the house he must pay that in addition. It runs over five cents per quart for doorstep delivery.

During the past five years, at these cut rate stores in Chicago, I have observed picketing, broken windows, stench bombs thrown into the stores ruining all food. Where there was picketing by the Defendant Union, the stores have been unable to get deliveries of any kind—bread, groceries. I have observed broken windows. Where the stores had plate glass insurance, it was cancelled and they were unable to get more. They picket the store for a week and keep bothering the storekeeper and if they can't influence him to quit selling our product, they take the pickets away and in two days windows are broken and stench bombs are thrown in; they also come in and want to fight with the storekeeper. This has taken place since 1931; in every year, continuously, continuing all the time. I have seen pickets at
hundreds of cut-rate stores. I have seen 50 to 100 stores
376 picketed within the past thirty days and at the present
time. In 1932, the equipment of the Edgewater Dairy, a cut-rate dairy was broken up with sledge hammers and its pasteurizers punctured. Just recently at Belmont Dairy, all the machinery was absolutely wrecked. At Blue Ribbon Dairy pasteurizers were hammered up, coolers broken. Wagner Dairy in 1931 was bombed and the building wrecked. In 1932 they threw another bomb in there and wrecked the building. In 1933 they threw a great big bomb and a lady was injured. These acts were reported to the State's Attorney and to the Cicero police. When stores selling our products have been picketed, the store is affected and it does not sell the amount of milk it has been selling.

Our cost of store delivery is about ¾c per point. The average cost of delivering a point on a retail route is about 5¼c. A point is a quart of milk, or a half pint of cream. The average store takes from ten to twelve cases, twelve quarts in one case. All of our products are sold through cut-rate stores. If cut-rate stores in Chicago were to discontinue the purchase of our products, we would have no other outlet for our products. The cut-rate dairies do not employ members of the Milk Wagon Drivers Union, Local 753. The members of that union distribute the larger portion of milk distributed in Chicago, and if there were no cut-rate distribution, the defendant union would distribute all the milk—would be sold by the big dairies, Bowman, Borden, Wanzer.

In August 1933, I was driving a load of milk coming in from Wisconsin, east down Ogden Avenue, to the City Sanitary Milk Company. I was stopped about 4300 by a big group of men standing all over the street and sidewalks. Two men jumped on my truck on each side and had guns into my ribs. They swore at me and made me get out of the truck. In the crowd I recognized the defendants Steve Sumner, Ray Bryant and Bob Fitchie. The gunmen put me in a car and told me, "Now, you are not going to sell milk for any price you feel like. Get a hundred and twenty-four dollars and come back here, and we are going to sign you up to our Union." They took me to Cicero, and left me in front of our dairy. I got into the Dairy and call the State's Attorney's office and told them what happened. They said they would be right over. I also communicated with the
377 Chief of Police of Cicero. I was unable to get the one hundred twenty-four dollars. Dad, and I got in his car. We had ten dollars. We talked to Ray Bryant. They had a hundred men there from the union. Bryant said they would accept ten dollars and let us go about our business, so we gave him the money and I got on my truck and delivered the milk. Nothing further was done about joining. I have notified the State's Attorney at other times concerning violence. Two months ago I talked to Mr. Crowley about broken windows. Also during 1936 and 1937. Since 1932 I have been calling the State's Attorney's office frequently.

Cross-Examination by Mr. Riskind.

We have ten dairy drivers. They work six days a week. We have an extra man for the seventh day. They work from five until ten or eleven in the morning. Wages range from twenty to thirty five dollars. Our men work less hours than members of the defendant union; because they cannot deliver milk later to the storekeepers. We have a little home delivery in Cicero, about 125 points. We have helpers on the wholesale routes because we can give good delivery; they get back in time; it is easier for two men to handle. The plant at Richmond, Illinois, is owned by Josef Wagner, Sr. Pasteurizing takes about 45 minutes. When I was held up no officers came to see me from the State's Attorney's office. I only wanted my truck released. Either Bryant or Sumner gave me a receipt for the ten dollars.

Further Cross-Examination by Mr. Riskind.

I do not know who smashed the machinery of the Belmont Dairy.

378 MINNA KUELLMAR, a witness on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

My name is Minna Kuellmar. I own a grocery and milk store at 4411 Broadway, Chicago, Illinois. On or about March 13, 1938, two milk drivers who told me they were from the Borden-Weiland Dairy Company, came in my store and threatened me and warned that if I wouldn't take their milk, I wouldn't be in business any more. Three years ago I was in business at the same address and had another store at 4640 Broadway. At that time our store windows were broken. Also there was a milk strike on and my driver drove the truck and my husband and I followed him, and as we got to the Outer Drive, a car pulled up with about five men in it, and forced the driver over to the curb and shot at him and missed him and my husband and I shouted at the five fellows, and took the driver out of the truck and ran back to Broadway and Montrose to get a police officer. By the time we got back, they had poured gas on the truck and it was on fire. The driver put the fire out with a fire extinguisher. In the meantime, a couple of ladies came along and these men saw them and they thought it was us, and they took a crank and smashed the windshield of the ladies' car and cut her face, and it was full of blood.

We took the license number, and it was Philip Brown and he worked for the Wieland Dairy Company. The case went to Court and an outside settlement was made for some reason. I was present in Court, and Mr. Riskind (indicating David Riskind, attorney for Defendants) was in Court in connection with the defense of Mr. Brown.

At all these times I was selling cut rate milk.

Cross-Examination by Mr. Riskind.

Philip Brown was tried before Judge Philip Finnegan. I am not sure whether Judge Finnegan stated he wanted certain monies paid to my husband and gave the man probation. I was present in Court and had a lawyer representing me.

Our stores were not picketed, but a fellow smashed our windows at 4640 Broadway, Chicago, Illinois.

379 The strike was a farmer strike, but not our farmers. Ours brought the milk in. At the time I was selling Lake View Dairy milk products. I have sold them for five

years and intend to go on selling them. I could not remain in business, if I were not permitted to sell cut rate milk. I met Mr. Weiss five years ago and have not seen him in the last few days. I was served with a subpoena to testify. I have a card from the Plaintiff union in my window.

JOSEPH HALL, a witness on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

My name is Josephine Hall. I own a store at 2450 W. 51st Street, selling dairy products, a little canned goods, candy, and ice cream. I have been in business for four years and buy dairy products from the Lake View Dairy. I am selling my milk at cut rate prices. Three years ago, about the 2nd day I was opened, a union official came in. His name was Mr. O'Connor. He asked me if this was the milk I was going to sell and he said he was from the Union and was taking the milk out. I got kind of frantic and told him I had just paid for it and I was trying to make a living. He promised to come back, if we didn't throw the milk out. He said that they wouldn't let us alone. A few days later my window was broke and I had no money to put a window in, so I put a big siding on there. They carried that away and I finally put a piece of tin on and they broke it the second time. My window was broken just the other day. They are supposed to work for the United States Treasury. I was selling cut rate milk all this time.

Cross-Examination by Mr. Riskind.

I have not been picketed. In my window, I have a sign of the Plaintiff Union (referring to plaintiff's Exhibit 1). Mr. O'Connor is supposed to be an officer of the Union that supplies men to Borden and Bowman. My milk driver gave me the Union sign. He did not mention the Milk Wagon Drivers Union Local 753.

John O'Connor told me who he was and left a card with me at the time. He said he was an officer of the Union.
380 I made a complaint to the police and he was arrested and I was threatened again. After he was arrested, somebody else came and said, "Do you want a bomb in your place" and I got scared and dropped the charge. This second man was kind of short, looked very much like O'Connor. I did not go to the police station, as I got kind of scared

and they just dismissed the case for want of prosecution. When I told the police Mr. O'Connor's name, they knew who he was and picked him up. I turned his card over to the police. A lot of people said it was him at the time. Gus Palmer of the Lake View Dairy said it was him from the description. They had O'Connor at the 63rd Street Station and the case was to come up in the Stock Yards Court and I didn't go and it was dismissed for want of prosecution.

ALBINA PUSZKIEWICZ, a witness on behalf of the Plaintiffs, testified, as follows:

Direct Examination by Mr. Seelig.

My name is Albina Puszkiewicz, I conduct a milk store at 8140 Exchange Avenue, Chicago, Illinois, and sell milk of the Lake Valley Farm Products at cut rate prices. On May 6, 1938, Mr. O'Connor came into the store and asked us if we would continue to sell this milk. I said yes, and he said they will have to picket us. I told him that selling this milk is our bread and butter and that because the neighborhood is very poor, nobody would buy the other milk. The next day, they started picketing. After about three days, one of their drivers came in and asked if I would be interested in selling his milk. I said that it all depends on the price. He said he would be willing to give me a reasonable price, and he brought in a case of his milk and the pickets left. Two days later, the driver came back and said that I couldn't sell their milk and cut rate milk in the same store, because it is just not being done. I told him to go ahead and picket, because their milk was not moving at all. The pickets came back again and the next day the driver came over and said he had it fixed up and I would be able to sell the two different kinds of milk. He brought in two cases of milk. This driver if from Hunding Dairy. I knew what he was up to all the time. I knew I had to get the Lake View
381 out of there. The pickets were there three different times, until I could not do it any more. My husband is an invalid and I had to go and bring all my groceries in myself. I sell Lake Valley at 9½c and Hunding Dairy at 10c straight. It all depends on the price. That is what the people are interested in.

The pickets that were there the first time, were nice fellows and they kept on walking, but the second crew stood in the doorway and my sales went down one-half

the amount; they would not let the women pass by and they took up the whole sidewalk and one woman came in and had to go around, and a lady came in and said would it be safe for her little girl to come in. She was afraid she would be hit on the head with a bottle.

Mr. Riskind: I object to that and ask that it be stricken.

* * * * * *

The Master: Strike it out.

Cross-Examination by Mr. Riskind.

Mr. O'Connor did not threaten me, he told me the reason these dairies were able to sell cut rate milk, was because they weren't paying the drivers $48.00 per week. The pickets said they didn't recognize the Union Sign of the Amalgamated Dairy Workers. Our milk driver, Cass Zalewski gave me the Union Sign. He told me I would be safe if I would put the sign in my window; they had joined the Union and they were organized.

MARIE LAYCHAK, a witness on behalf of the Plaintiffs, testified as follows:

Redirect Examination by Mr. Seelig.

My name is Marie Laychak. I have a little lunch room at 936 E. 93rd Street. I did buy milk from Lake View, but now I buy from Bowman Dairy Company, since April. They picketed me for ten days and I had to give up. My business is primarily a restaurant, there isn't enough there either way to make a fair living, so that is why I took in the milk.

Cross-Examination by Mr. Riskind.

I intended to build up a dairy store by taking in cut rate milk.

382 The pickets that were in front of my store were very insulting to everybody that walked by. They went out in front of the place and kept singing all the time, "She sells water, she sells water," every child that came along they said, "Your mother should be ashamed to send you here, because they are not selling pure milk." I heard this. The picketing did not affect the sale of milk.

Redirect Examination by Mr. Seelig.

I sold an average of five cases a day besides my restaurant business.

NICHOLAS P. KOST, JR., a witness on behalf of the Plaintiff, testified as follows:

Direct Examination by Mr. Seelig.

My name is Nicholas P. Kost, Jr. I live at 420 Surf Street. I am a nephew of Mr. Kaiser, who is Vice President of the Lake Valley Dairy. I have three or four uncles in the milk business at this time. My father is in the business with the Bowman Dairy. He is a member of the Milk Wagon Drivers Union, Local 753. I have one uncle who is a member of that Union. At former times three other uncles were members of the Defendant Union. A good part of my family is in the dairy business.

Plaintiff's Exhibit No. 6, (Union Button of Amalgamated Dairy Workers) is admitted in evidence.

All of the members of our Union have these buttons. They were ordered in the latter part of April and received in the early part of May.

Plaintiff's Exhibit No. 7, (Constitution and By-Laws of Amalgamated Dairy Workers Union) is admitted in evidence.

Cross-Examination by Mr. Riskind.

I am associated with the Lake Valley Dairy since 1933. I lived at the same address as Mr. Kaiser for two years. My dad owns the building. My father has been a member of 753 for the last 20 years. I have a helper on my truck, I pay him $35.00 a week. He works six days a week. I run the route one day a week. For the last couple of weeks I have been busy on this case, and I have not been able to do anything else, but before that time, I was on the route all the time.

383 I know that the scale of wages of Milk Wagon Drivers Union Local 753 is $48.00 per week. My gross earnings are about a $100.00 per week. My expenses are between $15.00 and $20.00 per week.

I met Mr. Slotkin some time in the early part of March, 1938.

I saw our constitution and by-laws first about three

weeks ago when they were prepared by the Executive Board and our attorney.

John Igoe sells dairy supplies for the Uptown Blue Ribbon Dairy; Joe Igoe and Zalewski for Lake Valley Farm Products.

I have known Mr. Igoe for three or four years. We used to meet every morning and talk about these things and we have talked quite often about starting a Union. I first saw the Charter in Washington, D. C. on April 7. Mr. Slotkin and I went to Washington. The first time we talked to Mr. Seelig about this charter was just after we received it. The office in Washington gave us a temporary charter and sent us the original. The original is hanging in our office now. I did not talk with Mr. Kaiser about our Union until after we received our charter and have never mentioned in any manner or form that we intended to form this organization. I only see him about once a week. I did not talk to Mr. Wagner about the organization being formed before April 8. I see him every two months or so. We saw him on the 12th or 15th after we received our Charter. Joseph Igoe and I went to the Wagner Dairy and told him we had his men signed up and had an Agreement for him to sign. Mr. Slotkin and Joseph Igoe signed up the men for the Wagner Dairy. I helped in organizing the men of the Lake Valley Dairy. We had a meeting on February 26, 1938, at Capitol Hall, on Kedzie Avenue, all of the men present were vendors. At no time was Mr. Weiss or Mr. Kaiser informed of the meeting or the organization, nor did they attend any meeting. We were organizing for our men and we didn't deem it necessary to let the employers know until after we received our charter. Before April 8, we held a meeting in the Amalgamated Building of the Lake Valley men. At the Blue Ribbon Dairy there was a meeting about two weeks ago in the dairy itself, for the purpose of organizing the plant. We talked to the employees, but not to the employer at that time. Mr. Slotkin did the talking. He is paid $25.00
a week for his organizing work. We met Mr. Slotkin
384 in the early part of March. Us four boys had been
asking about this organization and we happened to hear mention of Mr. Slotkin; that he was in some way connected with the C. I. O.

Besides Mr. Kaiser, my uncle Andrew Adams is in the milk business, and there was one that worked for Western-United. My uncle Frank Kaiser has three routes running for Belmont Farms right now.

I was present when the Agreement was entered into

between the Wagner Dairy and Local 819. It was signed in our office. We understood Frank Wagner to be the manager of the plant. We had been out to see him and he said that he would drop down to our office and talk this over. After the men were signed up, Frank Wagner became a member. Frank Wagner has a membership card. We received dues from Mr. Wagner. We have received no other monies from the Wagner Dairy Company, besides this $8.00 dues. Nor have we received any money from the Lake Valley Dairy nor from Mr. Kaiser. Mr. Slotkin's expenses were paid by Mr. Joseph Igoe. We had no money in our organization at that time. Mr. Zalewski and myself also put money up. We intend to be reimbursed by the Union.

We do not intend to compete with the Milk Wagon Drivers Union, Local 753, for membership. All we intend to do is get in the unorganized plants in our Union. In our agreement, we intend to have a committee to pass on wages and hours. We are sending out notices today to have a meeting the last part of this week concerning wages and hours. We do not regard Frank Wagner as an employer.

Cross-Examination by Mr. Seelig.

I am twenty-four (24) years old. During the month of March, a meeting was had of all the members of our Union. We organized the workers of the Lake Valley Dairy first. The idea of unionizing the dairy workers of the cut-rate and independent dairies was formulated during the end of February. About 55 or 60 members attended our second meeting, at which time our affiliation with the C. I. O. was discussed. The four officers of our Union advanced various sums of money to get it started.

385 We have sought to organize the men from any dairy that are not members of any Union. Our activities have been confined entirely to dairies that have been unorganized. There is no desire on our part to smash the Milk Wagon Drivers Union Local 753.

Redirect Examination by Mr. Brussel.

The meeting at the Amalgamated Building took place about the middle of March. I was elected President at the meeting on February 26. The officers were re-elected in the Second Meeting.

We have held regular meetings after we obtained our charter. About fifty men were present at our last meeting. They were mostly vendors. We have minutes of this meeting.

All of Plaintiffs exhibits heretofore marked for identification are admitted in evidence.

The Plaintiffs rest their case.

ROBERT A. LAMSON, a witness on behalf of the Defendants testified as follows:

Direct Examination by Mr. Riskind.

My name is Robert A. Lamson. I am President of the Chicago Dairy College and Director of Dairy and Agricultural Bacteriology of Chicago Dairy College. I have the Decree of Bachelor of Science in Agriculture from the University of Wisconsin, and have done milk research work at the University of Wisconsin, Idaho, and Chicago.

I am familiar with pasteurizing methods. The milk is brought in from the country plants where it is received from the farmers and after it reaches the City plant, the milk is either pasteurized immediately or it is placed in a storage tank and cooled to keep the bacterial content of the milk at a low point. If it is pasteurized immediately, then it immediately starts through the period of heating, holding and cooling, heating to 144 degrees Fahrenheit, holding for a period of 30 minutes as a minimum and thereafter cooling it immediately to 50 degrees or lower. The milk is then automatically bottled and capped in a bottle filler, and conveyed into the cooling room until taken out for delivery to the customers. In the average plant, this process would probably take 5 to 6 to 7 hours.

386 Pasteurizing kills the disease producing bacteria known as the pathogenic bacteria and renders the milk safe. It also kills a very high percentage of the other type of bacteria, which causes the milk to keep longer. The average is 100,000 to 200,000 bacteria per cubic centimeter in raw milk. In pasteurized milk, it can not be sold if it exceeds 30,000. Whole milk may be raw milk or pasteurized milk. Milk must come into the City plant raw. Milk stays sweet longer after pasteurization. If milk is brought in from the State of Wisconsin and kept in a dairy plant in Chicago, ordinarily that milk can not be kept longer than 24 to 48 hours without it

spoiling beyond the practical limitations for successful pasteurizations. Milk must be put in final containers after it has been pasteurized. The container must be thoroughly cleaned and then immediately sterilized.

Mr. Seelig: At this time, if the Master please, I would like to make a motion that the entire testimony of Mr. Lamson be stricken physically from the record.

The Master: I will reserve the ruling on that.

Cross-Examination by Mr. Seelig.

The chemical constituents of the milk, such as butter fat and sugar are not appreciably altered by the process of pasteurization. The entire pasteurizing process is simply a process of raising the temperature of milk to a required point and holding it there for a certain period. There is nothing physically added or taken from the milk in pasteurizing. The milk is still whole milk after it is pasteurized. Pasteurizing takes from 30 to 45 minutes in a continuous system.

In most dairies in Chicago, the milk goes through a continuous system into an automatic bottler where each unit handles from 40 to 120 bottles per minute. About one hour intervenes from the time the milk is put into the pasteurizer until it is put into the final bottle.

The purpose of pasteurizing is to render the milk, safe with better keeping qualities, because of the inactivity and reduction in bacteria.

387 FRANK WAGNER, a witness for the Plaintiffs, recalled by the Defendants testified as follows:

My sister Mildred is married to Ralph Braden.

Defendants' Exhibit 1 and 2, being certified copies of Warranty Deeds of the Wagner Milk Plant in Richmond, Illinois, indicating title in Mildred Braden, are admitted in evidence.

Redirect Examination by Mr. Seelig.

The other day I testified that my father Josef Wagner, is the owner of the Richmond plant. That is the truth. My sister holds title for my father.

GUST PALMER, a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

My name is Gust Palmer. I am the head of Belmont Farm Products. About five months ago, some one got into our dairy; broke our machinery with a sharp instrument. We caused the President and Secretary of the Uptown Dairy to be arrested. I did not charge any of the members of Local 753 with this offense. We had received threats from the Blue Ribbon Dairy.

I was an officer of the Lake View Dairy until the latter part of 1936. Seigfried Weiss was traffic manager. We had drivers, then receiving wages from $11.00 to $32.50. We also had vendors. I do not know how much they earned. Mr. Kost earned around $30.00 per week.

Cross-Examination by Mr. Seelig.

There was a hearing in Court arising out of the damage to our dairy and the parties brought in were discharged.

All of the references I made were to the Lake View Dairy. I was never associated with the Lake Valley Dairy. I do not know whether they have drivers or vendors, at this time. I do not know what salaries they pay.

The case between my dairy and the Complaint against the officials of the Uptown Dairy was a problem between those two dairies. It did not involve the Lake Valley
388 Dairy nor the Wagner Dairy, nor any other dairy.

During the year 1933, we filed complaint against the Milk Wagon Drivers Local 753.

GEORGE BEILFUSS, called as a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

My name is George Beilfuss. I work for my father, who is a vendor selling dairy supplies of Belmont Farm Products. I was a vendor selling products of Lake Valley Dairy Products until July 31, 1937. I had the North Shore route and I did not have to start until approximately a quarter after six to six-thirty. I generally returned at between twelve and two. I made about $25.00 to $35.00 a week net.

I am a member of Amalgamated Dairy Workers Local 819, I attended a meeting of this Union. I was told by one of the other drivers that they were having a meeting for the purpose of forming the Union. No, I did not see any announcement on the Bulletin Board signed by the owners of the dairy requesting attendance at the Union Meeting. I do not remember the exact date of the meeting. There were 45 to 50 members present. Mr. Kost and Mr. Slotkin were there. They had a number of speakers.

Mr. Riskind; I am not shooting in the dark. I know what he told us.

* * * * * *

Witness: Can I have counsel?

Mr. Riskind: Can you have counsel?

* * * * * *

Q. Do you want to testify further? If you do not, I will excuse you.

A. No, because I feel that I have been made the goat here.

Cross-Examination by Mr. Seelig.

No, I have never seen you before (referring to Mr. Seelig). I have never discussed the matter of testifying in this case with any of the plaintiffs. I was subpoenaed here by Mr. Riskind. The President of Belmont Farms, Mr.
389 Gust Palmer took me to Fullerton Avenue and Halsted Street, at which time we were met by two of Mr. Riskind's men. They met Mr. Gust Palmer at that point and took me to Mr. Riskind's office. They paid the cab fare. They served me with a paper. At Mr. Riskind's office there was one other person besides him, his secretary and myself. At first I didn't have an attorney present at Mr. Riskind's office, but I made a complaint that I wanted a lawyer and my lawyer appeared. The only reason I went down to the office, was that Mr. Palmer told me it was going to be a Federal Investigation and I had better go down. When I went to Mr. Riskind's office, I thought it was in connection with a Federal Investigation.

THADEUS NIEMIRA, a witness on behalf of the Defendants testified as follows:

Direct Examination by Mr. Riskind.

My name is Thadeus Niemira. I am an attorney. I came to the office of David A. Riskind yesterday. My client Mr. Bielfuss was there at the time. The nature of this case was explained to me at the time I arrived.

GEORGE BIELFUSS, recalled as a witness on behalf of the Defendants, testified as follows:

Further Cross-Examination by Mr. Seelig.

It was at my request that Mr. Riskind phoned my attorney, because I refused to say anything else.

MORTON GERSTEIN, a witness on behalf of the Defendants testified as follows:

Direct Examination by Mr. Riskind.

My name is Morton Gerstein. I am employed by the Western-United Dairy and have been a member of the Milk Wagon Drivers Union Local 753 for five years. I receive $48.00 a week salary and commission.

I was never a vendor. Six years ago I was the owner of the Golden Dawn Dairy.

Cross-Examination by Mr. Seelig.

I am a retail route driver. I estimate the average number of points on a retail route to be about 200 points
390 a day. I deliver 1700 points a week. I make about 120 actual stops each day.

ALBERT HARRIS called as a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

My name is Albert Harris. I have been a member of Milk Wagon Drivers Union Local 753 for three or four years and work for the Capital Dairy Company. My salary is $48.00 per week and commission. I worked as an employee of the Lake View Dairy. My last work for that Company was in 1935. When I first started in August, 1932, I worked for nothing. Then they gave me $5.00, then $10.00 and at the time I left I received a salary of $32.00. For a time I worked seven days a week, and then they gave me six days. The last year I received a vacation.

Cross-Examination by Mr. Seelig.

When I received the salary of $32.00 from Lake View Dairy, I was 22 years old. I had a little of both wholesale and retail business on my route. I am not a vendor at this time. My Company does not employ vendors.

Further Direct Examination by Mr. Riskind.

When I was with Lake View Dairy, the cashier was collecting $2.00 a week to join as a member of the Milk Wagon Drivers Union Local 753. When I found out they weren't going to become a part of Local 753, they refunded the money to me. I had no trouble getting my money back.

Cross-Examination by Mr. Seelig.

I do not know the reason why the Lake View Dairy affiliation with the Milk Wagon Drivers Union Local 753, did not go through. At that time the Lake View Dairy was selling cut rate milk.

JOSEPH SCHLEE, called as a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

My name is Joseph Schlee. I am a member of the Milk Wagon Drivers Union Local 753. I was the owner of Lake View Dairy from the date they opened up in 1932 until
391 1933. We had drivers working for us. Their average salary was $15.00. They worked seven days a week and received no vacation. We had vendors. They made about $15.00 per week. I know the present condition of the Lake View vendors. They average about $25.00 per week. They work seven days a week and have helpers on their trucks. Their helpers are paid perhaps $2.00 per week. They are usually only about 14 to 15 year old boys. My wages are $48.00 per week and commissions amounting to about $20.00 a month. I work six days a week and receive a vacation of two weeks. I work for the International Dairy.

Cross-Examination by Mr. Seelig.

Yes, I am opposed to the selling of cut rate milk. To a certain extent, I am opposed to the vendor system of distribution.

I do not know the earnings of Nick Frost or Joe Igoe.

Q. You don't know anything about Lake Valley, do you?

A. I know they have been in business and I know who is connected with it and that is all.

* * * * * *

Q. * * * With the exception of Mr. Beilfuss you don't know the earnings of any vendors with the Lake Valley Dairy at this time, do you?

A. No sir, not vendors no.

Q. So that you have no idea as to what the average earnings of the vendors with the Lake Valley is at this time, do you, sir?

A. Not at this time, no sir.

I don't know any of the helpers on any of the Lake Valley routes. I don't even know whether they are paid by the Lake Valley or by the men themselves. I do not know the age of any helper working on any route at this time.

I was an officer and owner of the Lake View Dairy and during that time I had to withdraw my union card from Local 753.

I am not on good terms with Mr. Kaiser of the Lake Valley Dairy.

Redirect Examination by Mr. Riskind.

Q. * * * Now, to what extent are you opposed to the vendor system?

392 A. Well, provided they sell for the regular price, the way we do.

Q. Yes.

A. And not for 8½c as at the present time.

Q. Is that the extent you are opposed to it?

A. Yes, sir.

STEVE SCHOSTOK, a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

I am a milk wagon driver for the Western-United Dairy. My salary is $48.00 per week and commissions which average about $32.00 to $34.00 per month. I work six days a

week and receive a two week vacation with pay. I am a member of the Milk Wagon Drivers Union Local 753. I was a vendor for the Meadowmoor Dairy, starting in 1932 and quit in 1935. I worked seven days a week and my net earnings were about $18.00 a week.

Cross-Examination by Mr. Seelig.

When I was a vendor at the Meadowmoor Dairy, my route was mostly a retail route. I had only about 140 or 160 points altogether, and I netted about $18.00 per week. No, I do not know how much a wholesale vendor would net if he carried from 1200 to 1500 points a day.

I distribute around 300 points a day for the Western-United at this time. My route is wholesale and retail. It takes me about 7½ hours. I make about 128 stops per day. On my route the average housewife takes 1 to 1½ points or bottles of milk daily.

I do not know the amount of earnings for the vendors of the Lake Valley Dairy.

I am opposed to the sale of cut rate milk in the City of Chicago.

I am opposed to the vendor system of distribution. Local 753 does not permit helpers on the routes. I do not know how many hours a vendor for the Lake Valley Dairy Company works or do I know how many days a week they work. No, I was not subpoenaed and I did not receive the subpoena fee for testifying.

Recross Examination by Mr. Seelig.

No, I do not know of any routes that carry as little as 140 points to-day.

393 JAMES CAVICO, a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

I am a member of Milk Wagon Drivers Union Local 753. I am a route rider and receive $53.00 a week. I serve six routes each week on the days that the regular men are off. I was a vendor for the Golden Dawn Dairy until 1934. I worked seven days a week and my net earnings were $15.00. I started to work at 3:30 or 4:00 o'clock and quit about 2:00 o'clock in the afternoon.

Cross-Examination by Mr. Seelig.

I couldn't tell you if it takes longer to distribute from a retail route or from a wholesale route. I never worked on a wholesale route. The average number of points on a route at our dairy is about 300. Retail stops mostly take one point each. Some days I run 120 and some days 150 stops. It would take about four hours just to make these deliveries. Then you have to go back on the early stops to collect. No, I have no opinion as to the average number of stops in an hour. The longest route I run is about fifteen miles.

WALTER JOB, a witness on behalf of the Defendants testified as follows:

Direct Examination by Mr. Riskind.

I am a driver for the Western-United Dairy. I am a member of the Milk Wagon Drivers Union Local 753, and receive $48.00 a week salary and commissions amounting to about $20.00 a month. I work six days a week and receive a vacation of two weeks with pay. I was a vendor buying milk from the Reliable Dairy. I worked seven days a week and averaged $15.00.

Cross-Examination by Mr. Seelig.

The vendor route was partly retail and wholesale. I carried about 150 points. I made a profit of about five cents on each point. No, I have no opinion what the income would be if I had carried 1200 points daily. No, I don't know the number of points carried on a wholesale route of the Lake Valley Dairy at this time. My present route is retail and wholesale. I carry about 350 points. About 130 points are
retail. I make about 100 stops a day. I start at 5:30
394 in the morning and make my last delivery about 12:00
o'clock. In addition to delivering however, I have to revisit certain stops to make collections. In addition to the retail stops I have approximately 12 wholesale stops and a school stop. I make two trips daily to the school; one in the afternoon and one in the morning. The afternoon trip is made at a quarter to two and takes about a half hour. After I am through with the school stop, I have the rest of my route to finish. This takes about four hours.

AL ZELLER, a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind

I am a member of the Milk Wagon Drivers Union Local 753, for the past four and one-half years. I receive $48.00 and commission. I work six days a week and receive a two week vacation with pay. I was a vendor for the Meadowmoor Dairy. The last time I was a vendor was four and one-half years ago. I earned $15.00 to $20.00 per week. I worked 7 days a week.

Cross-Examination by Mr. Seelig.

I am now employed by the Capital Dairy on a retail route. When I was a vendor for the Meadowmoor Dairy, I had a retail route. I also had some wholesale. It was in the very beginning of the Meadowmoor Dairy. I was one of the first trucks to pull out of the dairy. I was building up my route and I couldn't tell you how many points I was selling at that time. The price of milk changed four or five times. It was eleven, and then ten and nine cents and finally it dropped to eight cents, so that we weren't making any money. My total was 1800 to 2000 points wholesale and retail combined a week. I was selling a very small amount.

I don't know how many points is carried on a wholesale route of the Lake Valley Dairy. I am opposed to the sale of cut rate milk and to the vendor system.

Redirect Examination by Mr. Riskind.

I am opposed to the vendor system, because they go out several hours earlier than we do and of course the difference in price.

Q. Why are they able to undersell you?

A. Well, they are able to undersell because—I think
395 I had better drop that.

The cut rate dairies are able to undersell because they have no trucks and do not pay any wages and have no bottle loss.

Recross Examination by Mr. Seelig.

If four times the amount of milk were carried on a route, the cost of delivery would be approximately one-quarter as much per point.

Mr. Sellig: Isn't it true that the principal difference between the sale of cut rate milk in the City of Chicago and milk stops you distribute is in the cost of delivery?

Mr. Riskind: If you want me to stipulate to that, I will be glad to. We can stipulate to the cost of—.

HARRY WALD, a witness on behalf of the Defendants, testified as follows:

Direct Examination.

I am a picket for the milk wagon drivers union. I have been a member of that union about nine years. I was last employed as a milk wagon driver in 1929 by the Western Dairy. I was hired as a picket for the Union by Ray Bryant. He is business agent. When I was employed as a picket, Mr. John O'Connor, supervisor of the pickets instructed me to wear the banner and not to talk to anybody; just to walk up and down in front of the store. I receive $40.00 a week and work six days a week. I picketed a store at 4441 N. Kimball owned by a man named Bazik, about the middle of August 1937. We started to picket and after about a half hour Mr. Bazik came out and said he is going to go to the Bowman Dairy. After Bazik put their milk in there, we went away. We made no threats against the store keeper and did not talk to any customer or anyone else. On July 27, 1937, I visited the store at 2850 N. Troy Avenue, owned by Jessie Wilson, with my partner Charley Segale. I parked my car on the other side of the street and my partner went into the store. Then I noticed my partner coming out and the storekeeper had one of those lead pipes and he was poking it on his back, chasing him out of the store. We went back to the Union and told them what happened. We were later arrested on the complaint of Mr. Wilson and were represented in Court by Mr.
396 Riskind. About a month after we visited the store, we appeared in Court and Judge Caplan discharged the case. I picketed a number of stores; about five or six stores of the Lake Valley and Wagner Dairies. My conduct was to see those store keepers and ask them whether as a favor to the milk wagon drivers union they would not buy union milk. Some stores we gave twenty-four hours and some stores practically a week and then when we came back and found their milk still there, we started picketing the stores. We did not talk to any customers or drivers or molest any store keepers. We did not talk to all of the store keepers

before we picketed. We picket because there are several hundred union drivers thrown out of work because of the vendor system. Because the vendors work longer hours and draw less pay.

Cross-Examination by Mr. Seelig.

The Milk Wagon Drivers Union pays me for picketing. I do not attend any membership meetings of the Union and do not pay dues to the Union at this time. In the case of Mr. Bazik, I don't know whether anybody else from the Union did anything to induce him to change when Mr. Bazik came out and changed to Bowman Milk. In the incident between my partner Mr. Segale and Mr. Wilson concerning the store on North Troy Street, I was not in the store, didn't overhear any conversation that might have taken place, and don't know what actually took place. During the past year I have probably picketed about close to one hundred stores. I am a picket on one store and taken from that to another store. Some times I will picket a very short time at one store. We always have a partner when we picket. No, I have never seen any broken windows, stores that have had stench bombs thrown into them and have never seen any stores where physical violence has taken place and don't know of any physical violence having taken place at any milk store in the City of Chicago. I don't know anything about the price at all. I don't remember whether I have picketed any store that did not sell cut rate milk. I have no idea whether they sold milk at cut rate prices or at the same price as delivered milk. I do not know the price at which milk was sold at any store I picketed in the last year. I do not know how many cut rate stores there are in the City of Chicago and do not know how many cut rate milk stores there were in Chicago in 1933. I do not know whether there are more or less 397 cut rate milk stores now than then.

The last time I was on the wagon, I had a little over 230 points; almost 200 points were retail. I made about 140 actual stops a day to deliver this milk. I had only two wholesale stops of about 30 to 40 points. It took me about twenty minutes to make these two stops. It takes very much less time to distribute on a wholesale route than on a retail route. An average of from three to twenty cases go into a milk store. When I have been picketing in front of these cut rate milk stores, I have seen the patrons of the stores bring empty bottles back to them.

Further Direct Examination by Mr. Riskind.

I was sent by Mr. Bryant, to the Wagner Dairy on June 4, 1938. I got there at about a quarter after three in the morning. I parked my car about three doors away from their plant. I observed the first truck coming out of the plant at 4:15. The next one came out about five minutes later and I observed five trucks after that coming out, up until about six o'clock A. M. Then I went home and got back about 11:00 o'clock. I noticed the first truck coming in about 11:30. The last truck came in about a quarter to three or two-thirty.

Further Cross-Examination by Mr. Seelig.

During the time from six until eleven A. M. I don't know what took place at that dairy and don't know whether any of the trucks that went out earlier came back during that time. I would not recognize any of the drivers and don't know whether the trucks that returned had the same drivers as the trucks that went out in the morning. It is my opinion that they work long hours because I noticed drivers coming back making special deliveries.

BERNARD F. RICHARDS, a witness on behalf of the Defendants, testified as follows:

I am a member of the Milk Wagon Drivers Union since 1903. I will be 56 years old next Sunday. At present, I am a picket for the Union. I was last employed as a milk wagon driver in 1931 by Sidney Wanzer & Sons. I lost my position because the dairy took my wagon off, on account of the system of vendors that was just coming in at that time. They were going out early in the morning and working long hours and I could not compete with them.

398 Q. And as a result, you lost customers.

A. A cheaper commodity, and I lost the trade.

That is why they took the wagon off. I had worked for Sidney Wanzer and Sons for sixteen years.

I was employed as a picket for the Milk Wagon Drivers Union by Ray Bryant, one of the officials. I was told to do peaceful picketing at all times and to raise no disturbance; no intimidation, to speak to no one and told that if I didn't obey those orders, I would be discharged. I received $40.00 a week salary for picketing. I have picketed four or five

Wagner Stores and three of Lake View. In November of 1936, I was picketing the store at 1625 Spaulding. Mr. Wagner, Sr., the elderly gentleman, I imagine he is about sixty-five years or seventy year old came up in a Ford car across the street. Mr. Wagner got out and came over and told me and my partner Sam Mellankoff to get out of there and used pretty bad language. We told him we wouldn't so he produced a gun. I walked down to Ogden Avenue and called the police. I never made any threats to anybody, did not molest any customers and did not talk to any drivers delivering commodities. All I did was carry a banner and walk up and down in front of the store.

Q. Did you talk to any bread drivers or any other drivers delivering food commodities?

A. None at all, with the banner on, unless they wanted to get some information, but I never spoke with the banner on.

* * * * * *

Q. And do you know why you are picketing?

* * * * * *

A. On account of the vendor system, the cheap commodity of goods which makes it hard for anyone to get back on the wagon again in Local 753.

I visited a store at 56th Avenue and asked him if he would not deal with a Union Driver belonging to Local 753. Some times the store keepers would have a little argument that they had to sell cheaper goods to keep their trade, or whatever the case may be. If they didn't change, we would picket them.

Cross-Examination by Mr. Seelig.

399 The conversation with the storekeeper on 56th Avenue was about two and one-half years ago. I haven't talked with a store owner of Wagner or Lake View since that time. I have picketed about twenty-five to thirty cut rate stores in the last year. When we picketed we worked in pairs. I don't know how many pickets are employed by the Milk Wagon Drivers Union. They never have meetings of the pickets. Mr. O'Connor and Mr. Bryant are in charge of the pickets.

There may possibly have been other reasons that caused the Wanzer Dairy to take off my route. When I was referring to vendor competition, I was not referring to wholesale vendors, but of the retail vendors.

Yes, there was a great deal of unemployment in 1932. The difference between the retail price of delivered milk and cash and carry milk in the stores was about two cents

a quart. When I left the Wanzer Dairy, 320 points a day was the highest during the winter months and in the summer months it went down to 160. Our wage scale was $50.00 a week and commission at that time.

All of the picketing I have done during the past year has been done at locations selling cut rate milk. During the past five years I have seen cut rate milk stores with windows broken, stench bombs thrown, price signs torn down and other acts of physical violence.

I am opposed to the vendor system, because the hours are longer and it is a cheaper commodity. It is two or three cents cheaper. I would not be opposed to the vendor system if they belonged to the Union I belong to. I talked to one vendor for Lake Valley. I don't know his name. He said that he started at five o'clock in the morning and worked through until three or four and came back there as late as five-thirty with milk. At my peak season I distributed about 320 points, making between ninety and one hundred points. My average was about three and one-half points to a stop. My route was in Hyde Park and those people took more points than the average route. The average route takes about a point and one-half to a customer. I consider myself to be an average worker. I made about thirty to forty stops an hour.

Mr. Riskind: Yes, his route was exceptional.

Yes, I have seen plaintiffs' exhibit one. (Referring 400 to Union Sign of Amalgamated Dairy Workers Union).

I have seen the sign at the store at 2611 E. 87th Street, selling Lake Valley Milk. I am still picketing there.

Concerning the incident that took place at 1625 Spaulding Avenue in November 1926, I did not cause Josef Wagner to be arrested.

Redirect Examination by Mr. Riskind.

We pickets work in pairs, one has a banner on and another one rests an hour.

COLUMBUS STELLE, a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

I am a member of the Milk Wagon Drivers Union Local 753, for eighteen years. I am employed by them as a picket. I was a driver for the Bowman Dairy for eighteen years. I lost my route on account of the competitive vendor system.

Before the vendor system started, I had about 290 points on my route in May 1930. I gradually lost a lot of the business and dropped to about 230 and I was taken off. The last time I worked as a driver was November 30, 1937. Some time in March 1938, I was employed as a picket. I was employed by Mr. John O'Connor, as a picket at $40.00 per week. He instructed us to peacefully picket and not molest anybody or we would be discharged. I picketed the Wagner Store at 163½ W. North Avenue. I did not talk to Mr. Moorhatch, the owner. I think we picketed three days and then the Union Driver came in and left milk and we went away.

Cross-Examination by Mr. Seelig.

At the time I was discharged from the Bowman Dairy, I had about 230 points on my route.

Q. Now, isn't it true that 230 points on a route is and was at that time a profitable route?

A. I do not know.

We get commission for carrying more than 191 points a day. I was carrying about forty more points than the requirements for commission. No, there was no special reason for my being discharged.

I don't recall any cut rate milk vendors in the City of Chicago in 1930. I am not acquainted with any of the wholesale vendors of the Lake Valley Dairy and do not know how many hours they work or how many points of milk they carry. I have not been on a wholesale route.

401 I had four or five grocery and drug stores on my route and in these stores I brought the milk in and put it in the ice box and took other things out. It took five, ten or fifteen minutes. I delivered to about 150 or 160 stops on my route. Yes, I delivered a little over one point per customer.

Yes, I am opposed to the sale of cut rate milk. I was present at Mr. Riskind's office, together with a couple of pickets, Mr. Bernard Richards and Harry Wald.

CHARLES SEGALE, a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

I am a member of Milk Wagon Drivers Union, Local 753, for 20 years. I am engaged as a picket at this time. I was last employed as a Milk Wagon Driver about four and one-half years ago by the Bowman Dairy. I receive

$40.00 a week for picketing. I was hired by Mr. Bryant. He instructed us to walk up and down in front of the store and talk to nobody. When I lost my route I had about 300 bottles a day and took sick with pneumonia. When I got back, in about two months, my route was down to one-half. During that time there were vendors running through the route and through their long hours and earlier deliveries they got the business. I was unable to take my business back.

I have picketed two Wagner stores and about eight Lake Valley stores. I picketed the store at 936 E. 93rd Street and at the last the owner decided to make the change. We went in and saw the lady and asked her if she would as a favor buy from the Milk Wagon Drivers Union. We made no threats of any kind. My partner was Harry Wald. We did not molest any customers and did not stand in front of the store. About August 1937, I visited the store of Jessie Wilson, at 2850 N. Troy. I went into the store and there was a lady there. I represented myself from the Milk Wagon Drivers Union and asked the lady for a favor to the Milk Wagon Drivers, and the unemployed drivers if she wouldn't handle union milk. At that time Mr. Wilson walked in the door. He walked behind the counter and came out with a pipe and told me the State's Attorney and Police told him how to handle us hoodlums. He ordered me to get out of the store and I turned around and he hit me on the head with the pipe. There was a warrant sworn out by Mr.
402 Wilson and I appeared in Court. I was represented by Mr. Riskind. The case was dismissed. I have not committed any acts of violence in any of the stores that I have picketed and I made no threats against any persons whatsoever. I did not talk to any bread drivers or any other drivers of food commodities.

Cross-Examination by Mr. Seelig.

The Laychak store on 93rd Street discontinued purchasing from Lake Valley after we picketed for about ten days and took from Bowman Dairy. A lot of the delivery men delivering other commodities went in and out of the store after we commenced picketing. I have never seen a milk store at which violence has been committed. I have picketed seventy-five or more milk stores in the City of Chicago. I did not know the address of any store that I have picketed at any time that did not sell cut rate milk. If I were sent to do so, I would picket

a store even if the vendor delivering to the store worked shorter hours than members of Local 753 and made a larger net income.

When I talked about vendors competition on direct examination, I was referring to retail vendors and was not referring to cut rate milk stores.

Defendants Exhibit 3 (copy of Milk Wagon Drivers Form of Contract with dairies) admitted in evidence.

Defendants Exhibit 4 (copy of city ordinance concerning milk and milk products) admitted in evidence.

RAY BRYANT, a defendant testified as follows:

Direct Examination by Mr. Riskind.

I was born July 21, 1881. I am Trustee, business representative and a member of the Executive Board of the Milk Wagon Drivers Union Local 753. I have been identified with the milk craft since January 20, 1908. I was a milk wagon driver for the Bowman Dairy Company for two years, became a foreman in 1918 and then went to work for the Union full time. My duties at the present time are inside of the office. I am assistant Secretary and Treasurer and have charge of the pickets. I take care of grievances that come into the office and general work that comes in. I do not believe that I can state the time that I talked with any of the vendors of the Lake Valley or Wagner Dairy. Within the last year a man
403 came in who had been a vendor with the Lake View Dairy and wanted to go to work at a union dairy and wanted to know what objection we would have. We told him we would welcome him, if he could get a job with one of the dairies that had an agreement with us.

Witness: A. I am not going to falsify here, I can not remember what the man said.

I am acquainted with the vendor system. There are two types of vendors. They are known as wholesale and retail vendors. The retail vendor was the man that was attracted to the business in the early part of the depression. In come cases he was an ex-driver who had lost his position and there were certain dairies that set up equipment to furnish milk at a platform price. These retail vendors furnished their own trucks, assumed their own responsibility and bought milk. They sold the milk to whomever they could.

A few years later the wholesale vendor developed his method. They decided to put on stores and furnish them milk and gradually the retail vendors dropped out, more or less of the picture and these wholesale vendors came into effect. When the loads got a little heavy they operated in most cases with a helper. Most of the wagons are operated with two and some times three men.

The retail vendor works unusually long hours, seven days a week, no vacation and very low return.

The wholesale vendor does not work as long hours. He is working an average of about nine hours a day, I believe, basing that on an investigation I made last Saturday. The helpers are employed by the vendor. They are paid about $18.00 a week and work seven days. The helpers help the wholesale vendors out. I know of some instances where a wholesale vendor employs more than one man. The business increased in some instances and the vendor graduated from running the wagon and hired help to run it, and in some cases got another truck and he employs a driver and then a helper on these other trucks. The drivers I talked to got $30.00 a week and worked seven days.

According to our union, no delivery is supposed to be made before five-thirty and all off the streets by three o'clock P. M. The retail wage scale is $48.00 plus
404 commission. The wholesale driver receiving commissions gets $49.50 and the wholesale driver not receiving commission gets $52.50 a week for six days. He receives a vacation of two weeks with full pay. When our Union was organized, the men were required to work fifteen to eighteen hours a day and it was a gradual betterment up to that period where we succeeded in getting eight o'clock delivery in the morning and the men in and off the street at a reasonable time. In order to meet the competition of the vendor system, we found it was impossible to enforce the eight o'clock ruling, so we had to let the men go and start earlier in order to meet this unfair competition. The average wage of the retail vendor at this time is $17.00 or $18.00 per week. As to the wholesale vendor, it depends on the load. The average is three-fourths of a cent to a cent margin on a bottle. I think the net earnings of the wholesale vendor is far less than our scale. If he sells 2000 points a day, and makes three-fourths of a cent, there is only $15.00 there to play with. He has a little additional income from by-products which might bring it up to $20.00 a day. He has got to pay helpers, cost and maintenance of the truck

and gasoline and oil. I would not say it is over $30.00 a week on an average, because he is responsible for all credits and losses. We have not refused to take vendors into our Union, because they were selling milk cheaper than the prevailing price. We will take them in, providing they will show equivalent earnings and agree to work our hours. We have taken in between 100 and 200 in the last few years. The Wagner Dairy drivers are paid between $20.00 and $30.00 a week and I am told work seven days a week.

The Vendor System has had a very bad effect upon the milk wagon drivers union. In 1932 we had a membership of 7600. At the present time we have a membership of 5300. I will agree that maybe the depression has caused some of that, but the majority of it is caused by the competition from these vendors. We have sought to organize the vendors of the Wagner Dairy and Lake View Dairy along these lines. We decided there was only one thing to do and that was to organize them, in order to put them on a equal base, to see that they lived up to our
405 agreement in all ways. We had never refused to take any of these men into the Union, because they sold cheaper milk. We are not interested in the price that these men secure from the store keeper. We are opposing the method and system of distribution and not the price. About three or three and one-half years ago we commenced to place pickets at the stores selling milk delivered by men not belonging to Local 753. We put the pickets on and hoped that it would have an effect on the storekeepers, so that he would return to a Union Dairy. It was very successful.

Before April 25, 1938, we had about twelve men working picketing six stores a day. At the present time we have close to 140 pickets. We increased the number of pickets after May 1, 1938. For the past two or three years we have been hampered in picketing on account of a Court order which restrained us from picketing the outlets of one of the largest independent dealers in Chicago. That restriction was removed on April 25. About May 1, I started to put on the new men and have put on twenty-five to thirty a day until I got up to the present number. The stores of the Lake Valley and Wagner are not the only stores that are being picketed. The majority of the stores we are picketing are stores serviced by the Meadowmoor Dairy. We are picketing those stores because of complaints from our men that lost business to the Meadowmoor Dairy. In 1932 or 1933, I took in-

formation from twenty or thirty retail vendors. They said they were working from twelve to fifteen hours per day, seven days per week and they averaged $16.70 a week. The retail vendor has not benefited at all. The wholesale vendors I think now has improved, but not equal with members of 753. Our Union does not permit a helper on a truck. Our purpose is to have one man employed as a driver. Before the vendor system started, we did not have any men on relief. Afterward, we had up to 800. In the winter of 1932 we took a reduction in wages and to get our men back to work we entered into an agreement that there would be no new men hired. Our books were closed to any new men for about three years. We made an exception in the case of vendors who wanted to join and become drivers. We wanted to clear up the situation.

406 Q. Did they agree to the conditions of wages and hours when you took them in?

A. Certainly, they agreed to it. You understand, we took them in, of course, as drivers.

Our grievance is against Vendor System. It reduced our membership. I think there is only one dairy in the City of Chicago to my knowledge that is not selling cut rate milk, the Wanzer Dairy Company. About 120 dairies employ members of Local 753. About 119 of them sell cut rate milk. Officially, I do not know of any occasion when we have done anything to stop milk coming from another state.

I do not believe I ever met Siegfried Weiss until we met in here. I have knowledge as to the violence that has occurred against the cut rate stores. I have been called over to the State's Attorneys Office. I naturally read the papers and hear the talk. About the first of May, 1938, I saw an article in a newspaper where the Milk Wagon Drivers Union had been blamed for a truck being tipped over. I immediately called the State's attorney's office and found I could not contact the person I wanted to. I was over there on Saturday and we had about an hour's conversation. There was another truck tipped over. On the following Monday, we gathered again at the State's Attorney's Office and Mr. Roach and Mr. Parrillo and Mr. Schaub of the Meadowmoor Dairy were there. We pressed the necessity for investigation and particularly accused this other group of tipping over their own trucks to prejudice the public against us. During the time this injunction was in effect, I can recall no violence which took place against the Meadowmoor Dairy.

There always have been stores that sold milk less than others to make a leader out of it.

Q. Now, when you placed pickets in front of the stores that are being delivered by non-union drivers, did other drivers, going to that location, belonging to A. F. of L. stay out of the store?

A. In most instances.

Q. Will you tell the Court why they do that?

A. Practically all of the teamsters in the City of Chicago are affiliated with the International Brotherhood of Teamsters and Stablemen and there are very few do 407 not belong to the Chicago Truck Drivers Union and when they see this banner, in a store or anything else, they do not go through the picket line. It is a sister local and there is a kind of understanding.

When we hire pickets I tell them to do exactly what John O'Connor told them to do, to walk up and down all day with the banner and to talk to absolutely nobody. Some deliveries are being made, but the majority do not make deliveries, through there obligations. To my knowledge, the union officials have never authorized any violence. After the Meadowmoor Dairy injunction was dissolved there was an assessment levied against the members to put on a lot of pickets. At that time they were getting a $3.00 a week increase, and they said that they were perfectly willing to put it in an assessment. The assessment was approved at the regular meeting. I have known Frank Wagner for many years and have always been friendly with him. In August, 1933, I was not present when a mob held him up.

Cross-Examination by Mr. Seelig.

Mr. Steve Sumner is Secretary and Treasurer and a member of the Executive Board of the Milk Wagon Drivers Union. Robert Fitchie is President, business agent and a member of the Executive Board. Fred C. Dahms is recording Secretary and business agent and member of the Executive Board. Joseph L. Patterson is a Trustee and member of the Executive Board. Alvin F. Richards is a Trustee, business representative and member of the Executive Board. All of these men devote all of their time to union affairs. None of them are dairy workers. I have been a full time employee of the union since 1919 and have been assistant Secretary and Treasurer since 1928. Steve Sumner has been Secretary of the union since 1928. Robert Fitchie has been President

since 1909. Some years ago all those officers that were then officers were elected for life. Mr. Sumner, Fitchie, Patterson and myself are elected for life. Alvin Richards was the last man elected in 1930. The last time we had a general election of all of the officers in our union was about 1916. My salary is $9000.00 a year. I don't care to answer as to Mr. Sumner's salary. Mr. Dahms receives $9000.00 a year. There was a reduction made in all of our wages in 1932. Since then, there has been no change. I think Mr. Sumner received $11,000.00 a year during that time.

408 Other than our warden, who receives $50.00 a month, there are no milk wagon drivers who are Officials of our union.

Defendants Exhibit 3, being form of Union Contract with dairies applies only to employees of dairies, and the word "Vendor" does not appear anywhere in the form. The amount of milk distributed by retail vendors in Chicago is very small. It is a negligible amount. One Lake Valley driver came to my office and talked with me as to his desire to work as a union driver. I told him that if he got a job as a driver, I would give him membership. I don't know whether the vendors buy or sell for cash, I do not know any vendors for Lake Valley that sells on credit. The average number of points on a route employing members of our union is about 260 to 270. Practically all of these routes include some wholesale stops. Between 1600 and 1700 of our drivers are employed by the Bowman Dairy at this time. About 1400 to 1500 are employed by Borden-Wieland. About 350 by Wanzer Dairy. About 140 by Capital Dairy. About 200 by Western-United Dairy. That totals about 4000. Our total membership at this time is 5300. The balance of our members are employed by more than 100 smaller dairies. When I refer to cut rate dairies, I refer to those dairies that sell all or practically all of their products at a cut rate price. I do not consider Borden-Wieland a cut rate dairy. They sell milk in the majority of their stores for one cent less than they deliver on their route. Bowman Dairy the same. I do not know of any Borden-Wieland or Bowman Dairy stores selling milk for eight and one-half cents.

Q. And how many of those stops can a man make on a route, where he has to run up and down stairs, on the average three story building or less?

A. Well, I would hate to have to make more than 35 to forty. The cost of running a truck is about $3.00 a day. On a retail route of 200 points figuring a $48.00 wage scale

for six days, the cost of distribution would be in excess of five cents a point. If a vendor purchases his milk from the Lake Valley Dairy and distributes on the average of ten cases at twelve stops each day, making a total of about 1200 points of milk, if he were collecting each day and the store keeper would pay him as soon as he was through,
409 it would not take more than twenty minutes to a stop.

But, we find that when a storekeeper has a customer, the driver has to wait until he is through and you can not get out as fast.

I do not know of any vendor route of the Lake Valley Dairy that has two helpers on it. I do not know at what price vendors of the Lake Valley Dairy purchase their milk and I don't know on what margin of profit they work. If a vendor's margin of profit were one and one-half cents instead of three-quarters of a cent, his income would change proportionately.

The cut rate stores started in the City of Chicago in the summer of 1933. When they started in, they popped up all over. I think the figure is closer to 1700 stores than 3000 stores.

The independent dairies selling cut rate milk employ a total of 283 men selling such milk, including vendors distributing their products, according to the figures I just gave you. There has been no picketing at any store selling Borden, Bowman or Wanzer milk.

The per capita consumption of bottle milk has decreased in the past six years. My opinion is that price makes very little difference in the amount of milk purchased by the general public in the city of Chicago.

The amount of picketing that has taken place has increased a great deal since about the 1st of May.

The Vendors that I referred to on direct examination in connection with the hearing in Washington in 1933 were not from either the Lake Valley or Wagner Dairies. The Lake Valley was not here then. It is a long time ago, but I think most of the vendors were with the Golden Dawn Dairy, which is not in business now. Conditions have improved as to the average wholesale vendor as against 1932 or 1933. In our union working conditions have improved over a long period of years. Working conditions generally have improved in almost every craft during that time.

Q. You refer to the fact that vendors were taken in by your Union. They were taken in as drivers, were they not?

A. Yes.

410 In 1917 a three year agreement was signed with a wage scale of $21.00. There was a shortage of labor and by 1920 we were receiving $26.00.

If a driver on one of our routes were to sell milk at less than the established price, there would be a shortage for which he would be responsible unless the dairy took up this shortage. I think most of our men maintain the established price.

We have no members of the negro race in our Union.

I prepared plaintiff's Exhibit 8 for identification. (Printed circular). We distributed about 500,000 of these circulars and I think it has been mailed through the United States mail. The other members of our Executive Board are familiar with this circular. We are not and have not at any time picketed the pasteurizing plant of the Lake Valley Dairy or Wagner Dairy. No members of Local 753 are employed on the Lake Valley Dairy or Wagner Dairy. I never discussed the preparation of an Answer in this case. I never seen the same and do not know whether the same has been filed. Our union is a craft union, accepting milk wagon drivers as members. We do not accept inside workers. Our pickets not only picket at stores where one of our drivers had previously served, but also picket other stores.

Yes, I was present near the Ogden Dairy at one time when we were organizing it. There were a group of other men there and I saw Frank Wagner and there was a truck there. I did not examine the contents of the truck. This incident took place in 1925 and not in 1933. I could not tell you the name of any of the vendors of the Golden Dawn Dairy. In 1931, there were a large number of retail vendors in Chicago.

Re-direct Examination by Mr. Riskind.

I have had experience in the labor movement since 1908. I have never drawn up a wage contract where the wages are to be settled or fixed in the future; nor where the employer is also a member of the union. Mr. Robert G. Fitchie drove a milk wagon from 1884 until he was elected President of the union in 1909. Mr. Steve Sumner was a milk wagon driver from about 1881 until 1902 or 1903. Mr. Fred C. Dahms, Alvin C. Richards and Joseph Patterson, James C. Kennedy, also drive milk wagons until they became officials of the Union.

Re-cross Examination by Mr. Seelig.

No, we would not deny membership to a man who was a milk wagon driver simply because his father owned a dairy.

Yes, it is true that our Union arrived at its present wage scale agreement in conference with the Associated Milk Dealers.

Offer of proof by Mr. Riskind that Mr. John O'Connor is a member of the Milk Wagon Drivers Union Local 753 and is supervisor of the pickets and that he would testify that he did not make the threats that have been referred to in the Plaintiff's case.

STEVE C. SUMNER, a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

My name is Steve C. Sumner. I am 86 years old. I have been a member of Local 753 nearly 36 years. I am Secretary and Treasurer of the Union and was one of the original organizers in 1902. It was organized after a strike of the Teamsters. Before that time, wages were about 12.00 a week and a little commission. At the end of one year, they advanced $1.00 and at the end of the second year another dollar. Conditions were very bad and men worked all hours. A lot of the men left home before daylight and didn't get home until after dark. We had our first meeting December 13, and on January 13, we went out at 8:00 o'clock and came in at 5:00. Our wages were not bettered until 1905. We got an increase of $4.00 per week, until we finally got it up to $21.00. It was along in the twenty's that we got a six day week and a two week vacation.

I have held my present position since 1928.

My duties are taking care of the regular local secretarial work, looking after the sick, if a man and his wife get in trouble, I go and try to make peace among them, and look after the funerals. I am outside most of the time. I fix lots of complaints of men belonging to 753.

The worst offender of the Vendor System is the Meadowmoor Dairy.

Mr. Seelig: That is something new to me. However, the Meadowmoor started years ago, and has nothing to do with this case.

Master: I don't see that it is, but that in order that we may have a complete record, counsel disagrees with me, in order to have a complete record before the Court, I
412 will let him briefly state what he knows about it.

Concerning the Meadowmoor, Frank Diamond, the

brother-in-law of Capone and Murray Humphries came over to my office in 1932 and said they were going to show us how to make money and proposed to start the Meadowmoor Dairy. Murray said we know you get a lot of money from the big dealers, and I said that we have never taken a penny. He did a lot of talking about violence and forcing the other dealers and a short time later, he called up and wanted to meet us. Before he came in, Allman and Shoemaker sent over several officers to protect us and they found out that they had been there and they never showed up.

I talked to Murray Humphries many times while he was in the Meadowmoor Dairy.

I can only report the same story as Mr. Bryant has to the Vendor System and I would testify exactly the same concerning the wages and hours of our men. The Union has never attempted to fix the price of milk in Chicago and has never sat in any conference with the Milk Dealers where the price of milk was fixed.

I have known Frank Wagner since he was a child and I talked to him many times. Personally I have no knowledge as to what their drivers are paid. The last time I talked to Frank Wagner was in February 1938, at their dairy. I got a telephone call from Frank and I was over at the Brown Dairy at Summit. He said it was very important and I went over to the Wagner Dairy. I think Frank's sister was present. He told me about the smaller dealers starting an organization. I was there about two hours and it was pretty hard to tell you all that was said. I said that we wanted their men in the union and wanted him to pay the scale and live up to the hours of delivery. Frank Wagner said we can't go along on all of your propositions. And he said we have to have helpers on our routes. We talked about other dealers and he said they will all do as I do and I will help you get in the others. I told him that I was not in any position to make any other contracts with them and suggested that he call up Mr. Bryant. Frank called up Mr. Bryant and said he wanted to get into the Union. I wouldn't say whether there was a C. I. O. Union at that time, but he said they wanted to form a Union. I asked Frank to do me a favor to take a fellow out of Summit that had started in business there. Frank and I never discussed the price of milk. I never refused to take the Wagner Dairy men into the Union, because they sold at cut rate prices.

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Q. Have you ever sought to organize the Lake Valley Dairy?

A. Nor with that set up. I have never been out there.

Q. Did you attempt to organize Lake View Dairy?

A. Yes.

* * * * * *

Mr. Seelig: I object to that. They are not a party to this suit.

* * * * * *

Witness: A. I want you to understand that when I say with that set-up, I didn't mean you fellows here. I have never seen anybody connected with the Lake Valley Dairy. At one time the Lake View collected $2.00 a week from the men to get in our Union, and then they didn't get in, they got their money back. They never were members of our Union. All of the dairies, except Wanzer sell cut rate milk. We are fighting the conditions of employment.

I never knew Frank Wagner to be held up in front of the Ogden Dairy in August 1932 or 1933.

My testimony would be the same as Mr. Bryant's as to the number of members in our Union before the present vendor system and at the present time, and as to the effect of the vendor system upon our members. Our Union has never authorized any violence of any kind. We have instructed them at all times to obey the law and not to commit violence. There have been two occasions when the price of milk went down and the wages of our men went up. Mr. Bryant controls the picketing.

Cross-Examination by Mr. Seelig.

I have been an officer of the Defendant Union since 1902. I have not been a milk wagon driver since that time. I am opposed to any Union that is affiliated with the Committee for Industrial Organization. Our union is a craft union and only accepts as members, milk wagon drivers. We
414 do not take inside workers in our union of office employees. It is true that approximately 3750 of our 5300 members are employed by Bowman, Borden-Wieland, Wanzer, Western-United and Capital. We organized in 1902 and the wages of the men were not bettered until April 1, 1905, and somewhere in the twenty's we arrived at a six day week and secured vacations for our members.

It has taken considerable time to reach our present basis. I consider it dual organization if there is already one labor organization in a city and I would criticize any

such labor organization that entered into an agreement to arrive at wages and conditions of employment by voluntary agreement or by arbitration if voluntary agreement fails.

There were vendors in the City of Chicago prior to the organization of the Meadowmoor Dairy. We used to call them peddlers. Originally there were 1400 dealers that pasteurized and distributed their milk. Then a lot of these small dealers went together and sold their milk to others that had only one or two wagons and these others quit bottling. We had that a long time.

I do not know of any connection between the Lake Valley Dairy or the Wagner Dairy or its officers with the Meadowmoor Dairy at any time.

RAY BRYANT, recalled as a witness for the Defendants, testified as follows

Redirect Examination by Mr. Riskind.

Concerning Plaintiff's Exhibit 8 (printed circular), last fall at the Convention of the State Federation of Labor a resolution was passed that we ought to publicize the trouble that the milk wagon drivers were having in Chicago. We found that a lot of union men affiliated with the American Federation of Labor were purchasing milk from non-union drivers at the so called cut-rate stands not only in the City, but on the outskirts of the City. I consulted with an advertising house and prepared this pamphlet and distributed about 500,000 to the union people in the City of Chicago; to the members of the C. I. O. as well. We got cooperation from them.

Recross Examination by Mr. Seelig.

I took photographs of milk stands which appear on
415 this circular. Two of these stands pictured are in the City of Chicago. I have no knowledge that either Lake Valley or Wagner Dairy sells any milk in bulk to cut-rate stations.

Redirect Examination by Mr. Riskind.

At the same time that Mr. Sumner was supposed to have had his talk with Frank Wagner in February or March 1938, I had a short telephone conversation with

him and he talked to me as though he could help us if we took him in, in going after those bulk stands on the outskirts of the City, so for that reason I think he was prepared to come into that business.

Recross Examination by Mr. Seelig.

Frank Wagner said he was opposed to these bulk stands. I said he could help us.

The name of Lake Valley and Wagner Dairy both appear on this circular, because the circular applies to cut rate stands in the City of Chicago, as well as bulk stands in the outskirts of the City.

By agreement Plaintiff's Exhibit 8, being circular prepared and distributed by Milk Wagon Drivers Union is admitted in evidence.

STEVE SUMNER, recalled as a witness for the Defendants, testified as follows:

Further Cross-Examination by Mr. Seelig.

No, I have not read the answer filed in this case in my behalf. I have not read the answer, do not know its contents and it was never specifically discussed with me.

To my knowledge, there had been vendors or peddlers in Chicago since 1880.

The initiation fee of our Union is $100.00. The monthly dues are $6.00. At this time, the members of our Union are also paying a weekly assessment of $1.50.

Yes, I was present together with a group of other men at or near the Ogden Dairy plant when Frank Wagner was stopped with a tank load of milk. It was in April 1925. I am absolutely certain of the date. I heard Mr. Bryant testify the other day and my answers would be the same as his as to the officers, members of the executive Committee, salary of officers, length of time in office 416 and when these officers were elected, if I were asked the same question. My answers would be the same as Mr. Bryant as to cut-rate sales, the number of points carried on average retail routes and the length of time required to distribute.

Redirect Examination by Mr. Riskind.

Of the initiation and dues, better than $4.00 of that goes to sick and death benefits. On the occasion with Frank Wagner in 1925, there were no guns used that I know of.

Recross Examination by Mr. Seelig.

There was only one such incident at the Ogden Dairy. No this did not take place in 1933.

MABEL BRUCE, a witness in rebuttal on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I own a confectionery and light grocery business at 1625 S. Spaulding. In the fall of 1936, my store was picketed by two men from Local 753. The pickets were stopping customers from coming in and talking to them and we called up the Wagner Dairy. The old gentleman, Josef Wagner, came over to the store; there were two young men with him. Mr. Wagner went outside in front of the store and talked to the pickets. He just talked to them and told them not to bother us. I did not see Mr. Wagner display a weapon or a gun. I did not see any gun. The pickets got in the car and drove up to the corner. About an hour later the pickets came back. At two o'clock the next morning our window was broken. We called the police. About two weeks later we discontinued the sale of Wagner Milk.

Cross-Examination by Mr. Riskind.

I did not see Mr. Wagner strike anyone or see either of the men with him strike anyone. While Mr. Wagner was talking to the pickets, the two men with him were sitting in the car. I don't think they left the car. They were parked right near the store and they had nothing in their hands. Mr. Wagner just told them to stop bothering the customers. The pickets went to the corner.

Redirect Examination by Mr. Seelig.

The pickets came back in about an hour and continued to picket until the time was up.

417 JOSEPH KORDA, a witness in rebuttal on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I peddle milk for myself and I work in the Wagner Dairy. I am 25 years old. In August 1933, I was present near the Ogden Dairy in Chicago. I was in the Wagner Dairy office and Frank Wagner pulled up in a machine with two other men. Josef Wagner and Mr. Braden, Mr. Wagner's son-in-law, were present. Frank Wagner phoned the police station and the State's Attorney's Office in my presence. I drove to the Ogden Dairy with Frank Wagner, Mr. Braden and Josef Wagner. Frank's truck was parked on Ogden Avenue. It was a big truck that brings in milk from the Country. There were between 50 and 100 persons around Frank's truck. Josef Wagner got out and asked Mr. Sumner where the men were that held up Frank. Mr. Sumner said, "Frank is all right. There is nothing to it." There was some discussion about $125.00 initiation fee for Frank and Frank claimed he only had $10.00. Then Frank came back and said that we could go and that he had given Mr. Bryant $10.00.

I have been working for Wagner Dairy between 7 and 8 years, but when I distribute milk, I buy it outright from the dairy and do that for myself. I was not employed by the Wagner Dairy in 1925. I was twelve years old in 1925.

In the fall of 1936, I was at the office of the Wagner Dairy when a telephone call came in and I drove to 1625 S. Spaulding Avenue with Mr. Braden and Josef Wagner. There were two men there sitting in the car. Mr. Wagner asked them to show him their union card. One of the fellows jumped up and ran to Ogden Avenue. We got back in the car and went back to the dairy. There was no display of firearms and no fighting.

Cross-Examination by Mr. Riskind.

I was born December 10, 1913. I was married in 1935 at the age of twenty-two. I am certain that I did not work for the Wagner Dairy prior to 1930. I do inside work in the dairy and receive $21.00 a week. Once in a while I work seven days a week.

The vendor work of selling milk takes only about two

hours. I have only about 140 points. I have a boy working with me on the route. He is seventeen years old and I give him $4.00 a week and four quarts of milk a
418 day. He works for me nearly every day. He only works two hours a day. Yesterday Frank Wagner told me that I would be required to testify as to what happened at the Ogden Dairy. He just told me to tell what happened and he did not mention my age at all. I am not positive, but I think there are two men that take milk from the Wagner Dairy to the stores. I have never helped load any vendor trucks. I make about $21.00 or $22.00 a week clear after I pay my helper, as a vendor. I was introduced to Mr. Sumner at the Wagner Dairy about six years ago and have seen him four or five times since. I was present in front of the Ogden Dairy about twenty minutes. The call to the State's Attorney's office was in the presence of Ralph Braden, Josef Wagner, Evelyn Wagner and myself. Frank asked for the State's attorney. He called the Lawndale Police Station first. I first heard of the Plaintiff Union when I joined it, the first week in May. Frank Wagner is a member. I don't know when he joined. I never talked to him about joining it.

I do not regard Mr. Frank Wagner as my employer. He does not pay me. He does not give me orders. Mr. Josef Wagner pays me. I drive Mr. Josef Wagner in his car quite a bit. I like to chauffeur. I only work about four or five hours a day.

The two men at 1625 S. Spaulding Avenue were walking up and down in front of the store picketing. There was one banner from Local 753 that one of the men had. One rolled it up and the two of them went into the car. Josef Wagner made no threats and I am positive that he did not pull a gun. I have never seen Mr. Wagner with a gun. Inside the dairy there is a gun lying in the drawer. After the one man ran to the corner, Mr. Wagner went in and talked to the woman in the store and they came out and we left. The second fellow stayed in the car all this time.

Redirect Examination by Mr. Seelig.

I am sort of a handy man around the Wagner Dairy and do all types of odd work. My total net income is about $40.00 or $42.00 a week. I average about 8 hours a day. My helper works two hours a day. He only works on the route. I pay him, and he has nothing to do with the dairy. I think that the occurrence at the Ogden Dairy

took place in 1931, 1932 or 1933 because it happened about a year after I started working there, and I fix it in general reference to the time I started to work there. The
419 Wagner Dairy has no body guards and I have never seen anybody carrying any fire arms at the dairy.

CHESTER HALL, a witness in rebuttal on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

We have a store at 2450 W. 59th Street. We handle Lake Valley Milk and a full line of groceries. I have never discussed this case with anyone. We started this business in April 1935. The first day we opened the business, Mr. O'Connor, who is a representative of the Union came in and told us that we would have trouble if we continued to handle Lake Valley Milk, which is a cut rate dairy and doesn't have any connection with his Union. We continued to handle the milk and they broke our windows about a week later. Two bricks were thrown through the large plate glass windows at night. The police came and questioned us and this Mr. O'Connor was picked up shortly after that and I identified him. The police captain, I believe took out a questionnaire and questioned me fully about the threats that were made. Our windows were put in and they were broken again, Mr. O'Connor paid us another visit, and we lived in constant fear.

Cross-Examination by Mr. Riskind.

Mr. O'Connor was held on suspicion. No one was arrested for specifically breaking these windows. Just recently there was a window broken and two men were arrested. One of the fellows worked for the United States Government.

I did not appear in Court against Mr. O'Connor. Mr. Weiss told me to come as a witness. I am twenty-two years old and have helped my mother in the store when Mr. O'Connor made these threats.

DAVID A. RISKIND, called as an adverse witness by the Plaintiffs in rebuttal, testified as follows:

Cross-Examination by Mr. Seelig.

I am an attorney at law. My office is at 134 N. La Salle St., and I am the attorney for the Defendants in this case. I affixed my signature to the answer filed in this cause. I was present in October 1934, at the Felony Branch of the Municipal Court in the case of People against Edward Spitzer, Michael Cox, and others. I represented the 420 defendants. They are all members of the Milk Wagon Drivers Union 753. Steve Sumner was present at several of the hearings and Fred C. Dahms, I think was present at one or two of them. Restitution was made to Mr. Gust Palmer of the Lake View Dairy in the amount of $1125.00 for the destruction of a milk truck. There was a farmer's milk strike. The farmers belonging to the Pure Milk Association were not satisfied with the price and went on strike and no milk was delivered in Chicago, except by those who were able to get it into Chicago by their own means. All of the members of 753 who reported for work were told to go home, because they had no milk to serve. I was with them in front of the Bowman Dairy and Mr. Ray Bryant told them to go home, but they made objections to the vendors sneaking in milk. It was merely a farmer's strike and yet some of our men lost their heads. Some of them went to a tavern and got quite drunk and committed acts of violence. They appeared in Court and admitted that they lost their heads. The Union agreed to pay these damages that had been sustained by the vendors. I appeared in Court on behalf of union members charged with violence only in 1934 during the farmers strike. I have appeared in Court where pickets or men have been charged with violence and I had them discharged.

FRANK WAGNER, a witness in rebuttal on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

The pasteurizing at our plant is done in a continuous process system. At the conversation which took place a couple of months ago with Mr. Sumner at our dairy, my sister was present. Steve Sumner called up and asked if I would be in the office. He was in Argo. In about a half

hour he came in and asked if we had a store up there in Summit, Argo. He said that the Brown Dairy is right next door there and there is Borden and Bowman and it would help if we could get rid of that store. I told him that the store did not belong to us, but I thought the owner would sell it for about $400.00. Then he said, "Won't you join our organization?" I told him that we have helpers on our trucks and sell milk for two cents cheaper a quart in the stores, and that if we joined their Union, we could not have helpers and would have to sell our milk at a price, and go along with the others. That is all that we said, and then he said he would like to have me give up the store
421 in Argo, because it was hurting Brown and Borden and Bowman because the store was selling milk two cents cheaper than wagon delivery. There was no reference to any C. I. O. Union.

We have only one retail vendor route at our dairy. This route is run by Joseph Korda. He averages about 130 to 140 points, including cream. 99% of our business is wholesale. The man Ludwig, that Korda mentioned is a retail driver for the Dairy. The routes of Korda and Ludwig combined are less than 1% of our business. Joseph Korda pays the helper who works for him. He picks him up about six o'clock and leaves him off about 7:30. The boy goes to school at this time.

In my opinion violence makes it unable for us to hold the stores. We lose a very big margin of our business this way. I base this opinion upon stores that we have lost, that have had windows broken, stench bombs thrown into the place and that couldn't get their deliveries.

"Mr. Riskind: If the Court please, all this testimony was offered before on direct examination and I am asking that it be stricken.

The Master: Yes, strike it out.

Mr. Seelig: Q. I am simply asking—

Mr. Riskind: Don't make that statement on rebuttal, saying the same things over and over again.

The Master: I do not think it requires much evidence to determine what effect violence would have on the business of a place."

Our dairy is not and never has been connected with the Meadowmoor Dairy. Our dairy has been owned by my father and operated under his personal name for twenty-five years.

Cross-Examination by Mr. Brussell.

With reference to the meeting at our plant in February 1938, Mr. Sumner phoned us and said that he wanted to come out and see me. I phoned Mr. Ray Bryant while Steve Sumner was present. There are three stores that pick up milk at our dairy. They are owned by Mr. Williams and Mr. Krist. They also have their own trucks and deliver milk to their stores. They are members of the Plaintiff Union. Joseph Korda is the only retail vendor we have. We have no financial interest in the stores that pick up milk at our plant. I had talked to the owner of the store in Summit or Argo about selling the store for $400.00 before I said that to Mr. Sumner. I talked to
422 this man every day in the week. His name is Eddy Schroeder. I had no knowledge of the plaintiff union at the time Mr. Sumner spoke to me. Mr. Sumner at no time has spoken to me concerning that Union.

Mr. Korda is a retail milk man at this time. One afternoon I came from this hearing and told him he would have to testify. Last Saturday Mr. Korda went down to Mr. Seelig's office. He had never seen Mr. Seelig before that time. I was present at the conversation. Korda was asked what he knew about the Spaulding store. I did not talk to Korda about the Ogden Avenue accident after he spoke to Mr. Seelig last Saturday.

When Mr. Sumner came to our dairy in February no labor organization was mentioned. We had never even heard of one.

Redirect Examination by Mr. Seelig.

The Mr. Brown that leased the store that Schroeder had in Argo, is from the Brown Dairy, which dairy employes drivers of Local 753. Yes, my sister and brother-in-law, were also in Mr. Seelig's office last Saturday before the hearing and we all talked it over again.

RALPH E. BRADEN, a witness in rebuttal on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I live at Lake Geneva, Wisconsin. I am a son-in-law of Josef Wagner, Sr. the owner of Wagner Dairy Products. I am manager of the milk plant located at Richmond, Illinois.

In the summer or early fall of 1936, I was in the office of the Wagner Dairy. The owner of this store called and said they had picket trouble I went over alone the first time and asked him who sent him there. He would not give me any information. I thought another dairy had sent him. I left and around noon, he called again and said that there was a fight going on there. Mr. Korda drove Mr. Wagner and me to the store. We went into the store and were told that the pickets had been fighting and talking to customers. One of the pickets got out and came around behind the car and talked to me, and Mr. Wagner walked up to the car, to the other man and asked to see his Union card. As he walked up to the car, this other fellow jumped out and ran down the street. There
423 was no fight involving any of us, and no fire arms were displayed by anyone. I have seen the type of banner carried by the pickets of Local 753. I am not a sign painter and have never painted a sign in my life. I was employed as a cartoonist by the Mid-West Features Syndicate in 1933 and 1934.

Late in the summer of 1932 or 1933, I was present near the Ogden Dairy, when a tank truck of milk driven by Frank Wagner was detained there. I fixed that date in my mind, because I didn't know the Wagner family before 1931. I married the Wagner girl June 1, 1931. I was at the plant and went over there with Mr. Wagner, Sr. Mr. Wagner talked to Steve Sumner and wanted to know why they were holding this truck and where these men were that had drawn guns. Mr. Sumner said "This thing can be fixed up all right". He told Mr. Sumner that Frank only had $10.00 and couldn't raise the $125.00. There was another man there who was unknown to me at the time.

Cross-Examination by Mr. Riskind.

Mr. Josef Wagner, Sr. owns the plant at Richmond. The title of that plant is in my wife's name at this time. This was done some time last summer. I became manager of the Richmond plant the day we opened November 11, 1937. Before that time I was at the Wagner Dairy in Cicero from October 1935. I had charge of the retail stores. I know an attorney by the name of Kanak. No, Frank Wagner and I did not confer with Mr. Kanak about painting a sign with the words "Milk Wagon Drivers Union, Local 753." I am not a sign painter. I never painted a sign. I do not recall any storekeeper on West Chicago Avenue in 1926 that threatened to quit the Wagner Dairy. I first heard about

this case when I was called on the telehpone by Frank Wagner and asked if I could come in and testify. About 8:30 Saturday morning I drove down to Mr. Seelig's office with my sister-in-law. I was told that I would probably be asked about the Spaulding store and the Ogden Dairy matters. I have not been told what was testified to concerning these matters.

On numerous times Frank Wagner and I might have spoken about the Ogden Avenue accident. I was with him practically every day. After we visited the Ogden Dairy, Mr. Josef Wagner, went back to the Wagner Dairy. I wasn't working for the Wagner Dairy at that time. I
424 was in the automobile finance business and just happened to be there. I had been in the neighborhood on business. I was going out to Maywood. Frank Wagner came in and told us that something had happened at the Ogden. Mr. Korda drove the car and I went along with Mr. Wagner. I knew Mr. Sumner, he is a pretty famous man. I had seen his picture in the papers many time before that. When we got to the Ogden Dairy we saw a mob between 50 and 100 men. I am positive that Mr. Wagner did not have a gun with him. I have never seen Mr. Wagner carry a gun. I have never seen Mr. Wagner, sr. nor Frank Wagner handle the gun kept in the office of the dairy. We stayed at Ogden Avenue about twenty minutes. I got out of the car with Mr. Wagner. I didn't pay any particular attention to just where Korda stayed. Nobody has refreshed my recollection concerning this story.

Redirect Examination by Mr. Seelig.

On the day of the accident at the Ogden Dairy, I heard Frank Wagner phone the State's Attorneys Office. He phoned at my suggestion. He told them just what had happened, that two men had held him up.

I visited the Spaulding store the next morning after the episode I stated. There had been a couple of bricks and a stench bomb thrown in through the windows. I observed the odor about the place and the broken windows and the stench bomb.

Recross Examination by Mr. Riskind.

No, I never saw Mr. Seelig before. We stayed at the Wagner Dairy before we left for the Ogden Dairy long enough for Frank to call the State's attorneys office and the Lawndale Police Station. Frank did the calling. We have

extension phones there. We don't have a switchboard. I don't remember what number he called. He mentioned no name on the phone. Immediately after that he called the Lawndale Police Station. I don't know who he talked to there. When I visited Mr. Seelig's office, I told him that I remembered these incidents. I had no chance to discuss that with Mr. Frank Wagner before I visited Mr. Seelig's office. I had only been at the Wagner Dairy about five minutes before going down to Mr. Seelig's office. I made arrangements for Evelyn Wagner to ride downtown with me.

I didn't say anything to her about this case. She did
425 not tell me what she was going to testify to.

Offer of proof concerning Robert D. Lande.

Stipulation of counsel that Robert D. Lande would testify that when the recent conversation testified to by one of the pickets as having taken place in the store in the 1000 block in North Crawford Avenue at about 2:00 o'clock in the afternoon, that said R. Lande was just visiting the store and not delivering milk.

SIEGFRIED WEISS, a witness in rebuttal on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

We pasteurize by the continuous flow process. We have five pasteurizers.

There were unemployed milk wagon drivers in the City of Chicago before the advent of the present vendor system. Most of these vendors were men laid off by the big companies during 1930 and 1931 because of the depression. I know of no wholesale vendor route, with our dairy that has more than one helper.

The effect of violence is that the stores that have the violence quit us, and we can not get new stores on account of this violence happening to the older stores. I have never seen any picketing at stores that did not sell cut rate milk.

Mr. Harris who testified on behalf of the Defendants in this case, started with the Lake View Dairy when the Dairy started in business. He had a very small route. He started with about sixty points or less. A retail route must have 230 points to be profitable. A route under 230 points would not be a profitable route figured on the basis of $48.00 a week wage.

I remember the incident when deductions were made from the drivers of the Lake View Dairy in connection with

joining Local 753. All of the men were prepared to join the Union and they paid $2.00 a week to a fund to get the initiation fee. They did not join the Union. They were refused because at that time Lake View was selling cut rate milk.

I was a vendor myself. In our case, the fact that the
426 store keeper is waiting on a customer, has no influence on the amount of time required for the stop, because we just go in and take in the milk and take out the empties. The storekeeper usually has the order and the money ready.

Cross-Examination by Mr. Riskind.

We had employees at the Lake View Dairy. At the start there were employees that didn't make more than $15.00 a week. At the time we collected the dues from the men. They were all getting $32.50 a week. It is possible that there is one case on the whole route where a vendor would have to wait for the storekeeper. In most cases they would have the money right there with the order. We don't put our milk away in the ice box like 753, where they only deliver ten to fifteen bottles.

EVELYN WAGNER, a witness in rebuttal on behalf of the the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I work for the Wagner Dairy Products, and was present at the office of the dairy in February of this year when Mr. Sumner was there. Mr. Sumner came over and spoke to Frank Wagner in regard to a store in Agro. He wanted to know about buying the store and told Frank that if he could get the store that it would look good for him with the Brown Dairy. Frank said the store could be sold for $400.00. Mr. Sumner said that was too much money. Then Mr. Sumner spoke to Frank about joining the Union. Frank said if we join your Union we can not have helpers on the trucks and we can't sell our milk for two cents cheaper. Mr. Sumner said you know you can't sell it for two cents less, you will have to go along with the boys. The store in Summit is not owned by the Wagner Dairy.

Cross-Examination by Mr. Riskind.

I first found that I was to testify in this case last Friday from my brother Frank Wagner. I had never discussed this case prior to that time with him. I did not ask him what I was going to testify to. I drove down to Mr. Seelig's office Saturday with Mr. Braden. We did not talk about this case. I was not served with a subpoena. Frank Wagner, Mr. Braden and Mr. Korda were in Mr. Seelig's office. Mr. Seelig talked to the witnesses. He just told me to tell him all I knew about the case. Mr. Seelig told me he wanted to know my story and he wanted me to tell the truth.
427 Neither Frank Wagner, nor anyone else interrupted me or attemped to refresh my recollection while I was talking to Mr. Seelig. I don't remember if I was at the dairy at the time Frank Wagner came in and told about the Ogden Avenue incident. We have extension phones in our office. The office is just one big room.

STEVE SUMNER, a witness in rebuttal in behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

I have visited the Wagner Dairy three or four times within the past two years. I always saw a gun lying on the desk.

Offer of proof of Frank Wagner that a gun is always kept in the desk at the Wagner Dairy.

STEVE SUMNER recalled as a witness in rebuttal on behalf of the Defendants, testified as follows:

Cross-Examination by Mr. Seelig.

I don't know anything about Mr. Riskind testifying concerning a certain payment of $1125.00 in restitution for the destruction of a truck which occurred in February 1934.

We have our men defended by our lawyers when they are taken in Court. In July of 1934, a policeman called me up and said that there was a warrant out for me and said they wanted me in Court on a certain morning. I said we would be there and we were. The case was heard and we were exonerated. About a week before this I visited the Blue

Ribbon Dairy and talked to Mr. Henry Bressler, the President of the Dairy. They were a cut rate dairy at that time.

In 1925 there was the Good Fellowship Club. The members were all milk dealers. The purpose of the club was to cut out the same kind of competition that you fellows are giving, principally in the loop where they were selling milk below cost. They formed the club and I was not a member. They asked me to act as Chairman which I did several times. It was only to try to keep order. I was in Court on one case concerning bombing or vandalism. I do not remember any grand jury investigation of monopoly and bombings and vandalism concerning this club.

Q. And do you remember being called to the State's attorneys office concerning that club, at which time you 428 were ordered to disband the club?

A. I was called to the State's attorneys office, yes. The club disbanded a few months later.

Q. Now isn't it true that yourself and Henry Berger and eighteen others were indicted at that time for coercive methods and bombings and vandalism?

A. Well, I wouldn't say that we were indicted. If we were we never came to trial.

Mr. Seelig: Q. Isn't it true, Mr. Sumner, that in the month of January of 1925, yourself and two automobiles of sluggers stopped the milk truck of the North Shore Dairy because the owner refused to join the Fellowship Club, and that you compelled him to join?

A. I never had any sluggers with me.

Q. Do you remember any incident with the North Shore Dairy?

A. Yes, when he wouldn't pay the scale.

Q. But you don't remember the other incident, do you?

A. Well, I was only there once, and that was on account of the scale, and some men had not gotten in the union.

William Nier was Secretary and Treasurer of our Union for several years. Louis Misch organized some kind of a whiskey workers union. Martin De Frees was business agent of the Bakery Drivers.

Mr. Seelig: Q. Isn't it true that on August 30, 1921, yourself, Robert Fitchie, one of the defendants in this case, Ray Bryant, another defendant in this case, Mr. Wm. Nier, Martin DeFrees, Morris Friedman and Norman N. Ackrie had indictments returned against you in the Superior Court of Illinois for conspiracy and bonds affixed at $5000.00 a piece, is that correct?

* * * * * *

A. Well, I don't just remember. I will say this, that they generally indicted me when they indicted anybody else, whether I was there or not. But, I will say further that out of any indictments that were ever returned, we were never tried on, except one in 1906. That was in the big teamsters strike.

* * * * * *

423 Mr. Seelig: Q. Now, isn't it true that on October 23, 1919, the Supreme Court of the State of Illinois confirmed a sentence for sixty days for contempt of Court for violating an injunction order of Judge Jesse Baldwin against picketing, isn't that true?

* * * * * *

I attended a meeting of the garment workers and I knew there was an injunction, but the injunction did not name me. I told them what I thought about the injunction. I don't think I was breaking any law. They brought me into Court and Clarence Darrow defended me and others. It was carried to the Supreme Court of the State, and the Supreme Court said I was an interloper. I got seventy days by Jesse Baldwin. I had done thirty-two days of it, and they put me up in the hospital and gave me charge of it. At the end of thirty-two days the Judge sent for me and my sentence was discontinued and he said go home and have a good time Christmas.

Harry Ferrey was business agent of the South Chicago Local 742. George Turner was a milk dealer in Roseland. Wiert Speyer was a milkman in Roseland. Philip Shug was business agent of Local 721.

Q. Now, isn't it true that on August 17, of 1908, the three of you were booked at the Kensington Police Station with bonds fixed at $5,000.00 each, charged with assault for the slugging and shooting of Mr. Speyer?

A. That is true.

On numerous occasions I tried to influence Speyer to rejoin our Union. He had dropped his membership some time before the shooting. No, on a visit to Speyer about a week before the shooting I did not tell him that that was the last chance and that if he did not join, we would get him. We were arrested and in the Kensington jail. We were taken to court 8 times and they produced no evidence against us, and the case was dismissed. I don't know why they were unable to produce evidence. I was also indicted by the grand jury in 1905 for conspiracy to injure the business of Montgomery, Ward & Company. The case took about six months in Court. They examined 4700 jury men

before they got 12. Later we were tried and seven
430 out of the 12 said we were not guilty. And then we had a new trial which took only 21 days and the jury was out 75 minutes and brought in a verdict of not guilty.

Redirect Examination by Mr. Riskind.

Q. Now, during this history between 1902 and 1908, Mr. Sumner was there any attempt on the part of anybody to crush Local 753, was there?

A. I don't recall any. If there were, they didn't get far.

Q. Now, were these indictments, would you say that these indictments against you each attempts to crush Local 753.

A. No.

SIEGFRIED WEISS, recalled as a witness on behalf of the plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

The grocery store at 626 E. 63rd Street distributes the products of our dairy. This store has been picketed for about two weeks by Local 753. I visited the store last Saturday and when I came in, there was a very bad odor. In the carton here are the fragments of the stench bomb in the store. I got it from the owner of the store.

Q. Mr. Weiss, during the pendency of this suit, which was filed, I think, just 30 days ago, what, if anything, has happened to the number of stores through which you distribute your products?

A. We last about 25 to 30 stores through picketing.

Cross-Examination by Mr. Riskind.

I received a call from Mrs. Josephine Hail. She told me her windows were broke and I should go over there, as she didn't know what to do. I have talked to her about her business once in a while prior to that time, about milk and how she could increase her business and about advertising. I did not invest any money in her store. Some times she didn't pay her bills. Maybe $50.00 credit has been given to her. When a storekeeper is given credit, the driver does not always report it to me. On this occasion, it was re-

ported to me. The driver bothered her too much about the money she owed and she didn't like it. I know the approximate value of plate glass. They call us in when the windows are broken and we hear what they charge. I gave Mrs. Hall an estimate for those windows. I don't
431 think on any others. I sent an insurance man over to Mrs. Hall, because she couldn't get any insurance on account of her windows being broken twice.

I did not see anybody throw the stench bomb. To my knowledge I do not know who threw it. There are two pickets still there at the present time. No arrests have been made in so far as this stench bomb is concerned.

Defendants Exhibit 3, (Form of Union Contract), Exhibit 4, (Chicago Milk Ordinance), Exhibit 5 (Constitution and By-Laws of International Brotherhood of Teamsters, etc.) admitted in evidence.

Defendants Exhibit 6 (By-Laws of Milk Wagon Drivers Union of Chicago) Exhibit 7, (By-Laws pertaining to sick and death benefits) Exhibit 8 (copy of opinion of Judge Barnes), Exhibit 9 (Complaint of Wagner Dairy, etc, vs. Milk Wagon Drivers Union), Exhibit 10 (Findings of Master and Decree in Meadowmoor case) admitted in evidence over objection.

Proofs closed.

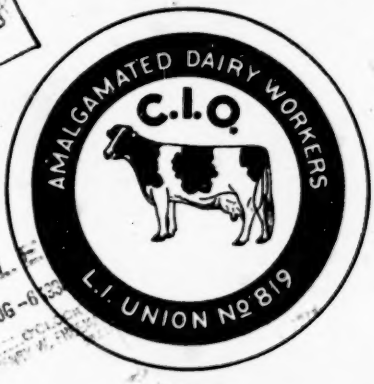
432 Endorsed: In the District Court of the United States. * * (Caption—16073) * * Condensed Statement of Testimony. Filed Jan. 19, 1939. Hoyt King, Clerk. Arthur R. Seelig, Attorney at Law, 11 South La Salle Street, Phone Central 7029, Chicago.

112 And on, to wit, the 6th day of August, 1938, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Exhibit No. 1, in words and figures following, to wit:

GRADE A MILK and CREAM

RECEIVED
6/14/11
DISTRICT COURT

In This Store Is Processed



AUG -6

AND DELIVERED

By

UNION WORKERS

WHO ARE MEMBERS OF THE

AMALGAMATED DAIRY WORKERS

L. I. U. No. 819

AFFILIATE OF COMMITTEE FOR INDUSTRIAL ORGANIZATION

(over)

113½ This card is and at all times will remain the property of Amalgamated Dairy Workers L. I. U. No. 819, to be returned to Union upon request at any time.

118 And on, to wit, the 6th day of August, 1938, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain EXHIBIT NO. 2, in words and figures following, to wit:

119 ARTICLES OF AGREEMENT.

This Agreement made and entered into by and between (Name of Dairy) .....
a private enterprise—a partnership—a corporation, organized under the laws of the State of Illinois, hereinafter referred to as the "Company", and the Amalgamated Dairy Workers L. I. U. No. 819, affiliate of the Committee for Industrial Organization, hereinafter referred to as the "Union".

Section I. It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationships between the Company's employees and the Company, and to set forth herein an Agreement to be observed between the parties hereto.

The term "employee", as used in this Agreement shall mean all wholesale and retail route salesman or drivers and their helpers and assistants; all milk distributors commonly referred to as "Vendors"; all persons employed in the sale and distribution of the Company's products; all pasteurizers, bottlers, helpers and other inside dairy workers; all office and clerical employees; together with all other persons employed either inside or outside by the Company, in the conduct of its business in any capacity whatsoever.

Section II. Recognition: The Company recognizes the Union as the sole collective bargaining agency for its employees, and agrees not to maintain in its employ any person or individual who is not a member in good standing of the Union. The Company further agrees not to engage, hire, or contract with any persons or individuals whose engagement, hiring, or contract will make them an employee of the Company, or vendors as above, unless such persons or individuals apply and are accepted into membership in the Union within forty-eight (48) hours after they

have become employees of the Company, or receive the products of the Company. This procedure shall be binding upon the Company during the life of this Agreement.

The Union agrees that so long as the Company shall comply with the terms hereof, and with the terms of all such additional agreements as there may hereafter be, that it will recognize the Company as a "Union Dairy", and that the Company shall be permitted to use the Union Label and other Union insignia. These conditions shall be binding upon the Union during the life of this Agreement.

Section III. Procedure: Within sixty (60) days after the Company and the Union have signed this Agreement, representatives of the Company and other dairies signing similar agreements, and of the Union, shall meet to negotiate all questions of wages, hours, and conditions of employment that shall prevail in the Companies' business. Matters on which the Companies and the Union agree shall be put into writing in Agreements, which shall be in full force and effect for one year after they are negotiated and signed, and which will carry provisions for renewal or amendment upon their expiration.

In the event that within ten days after negotiations are opened for formulating an agreement as to wages, hours and conditions of employment, there are still questions undetermined between the Companies and the Union, the matter shall then be appealed to an impartial Board of Arbitration, consisting of three members, one member to be selected by the Companies, one member to be selected by the Union, and the third member to be chosen by the first two members. The decision of the majority of the said arbitrators shall be final, and be binding upon both parties hereto, and upon all other dairies involved.

Section IV. Management. The management of the Companies' business and the direction of their employees, including the right to hire (subject to the terms of this and future Agreements), suspend or discharge for proper cause, or transfer, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company, provided that this will not be used for purposes of discrimination against the Union.

Section V. Term: This Agreement shall be and remain in full force and effect from the date hereof, and for one year thereafter, except as the same may be enlarged, modi-

fied or changed by written Agreement provided for in
121 Paragraph 3, hereinabove.

In Witness Whereof, the parties hereto have executed this Agreement this ..... day of ..... A. D. 1938.

Amalgamated Dairy Workers, L. I. U. No. 819.

By:.....

.....

.....

.....

Company.

.....

.....

.....

114 And on, to wit, the 6th day of August, 1938, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain EXHIBIT NO. 4, in words and figures following, to wit:

115 ARTICLES OF AGREEMENT.

This Agreement made and entered into by and between Lake Valley Farm Products Inc., a corporation, organized
(Name of Dairy)
under the laws of the State of Illinois, hereinafter referred to as the "Company", and the Amalgamated Dairy Workers L. I. U. No. 819, affiliate of the Committee for Industrial Organization, hereinafter referred to as the "Union".

Section I. It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationships between the Company's employees and the Company, and to set forth herein an Agreement to be observed between the parties hereto.

The term "employee", as used in this Agreement shall mean all wholesale and retail route salesman or drivers and their helpers and assistants; all milk distributors commonly referred to as "Vendors"; all persons employed in the sale and distribution of the Company's product; all pasteurizers, bottlers, helpers and other inside dairy workers; all office and clerical employees; together with all other persons employed either inside or outside by the Company, in the conduct of its business in any capacity whatsoever.

Section II. Recognition: The Company recognizes the

Union as the sole collective bargaining agency for its employees, and agrees not to maintain in its employ any person or individual who is not a member in good standing of the Union. The Company further agrees not to engage, hire, or contract with any persons or individuals whose engagement, hiring, or contract will make them an employee of the Company, or vendors as above, unless such persons or individuals apply and are accepted into membership in the Union within forty-eight (48) hours after they have become employees of the Company, or receive the products of the Company. This procedure shall be binding upon the Company during the life of this Agreement.

The Union agrees that so long as the Company shall
116 comply with the terms hereof, and with the terms of all such additional agreements as there may hereafter be, that it will recognize the Company as a "Union Dairy", and that the Company shall be permitted to use the Union Label and other Union insignia. These conditions shall be binding upon the Union during the life of this Agreement.

Section III. Procedure: Within sixty (60) days after the Company and the Union have signed this Agreement representatives of the Company and other dairies signing similar agreements, and of the Union, shall meet to negotiate all questions of wages, hours, and conditions of employment that shall prevail in the Companies' business. Matters on which the Companies and the Union agree shall be put into writing in Agreements, which shall be in full force and effect for one year after they are negotiated and signed, and which will carry provisions for renewal or amendment upon their expiration.

In the event that within ten days after negotiations are opened for formulating an Agreement, as to wages, hours and conditions of employment, there are still questions undetermined between the Companies and the Union, the matter shall then be appealed to an impartial Board of Arbitration, consisting of three members, one member to be selected by the Companies, one member to be selected by the Union, and the third member to be chosen by the first two members. The decision of the majority of the said arbitrators shall be final and be binding upon both parties hereto, and upon all other dairies involved.

Section IV. Management. The management of the Companies' business and the direction of its employees, including the right to hire (subject to the terms of this and future Agreements), suspend or discharge for proper cause, or transfer, and the right to relieve employees from duty be-

cause of lack of work, or for other legitimate reasons, is vested exclusively in the Company, provided that this will not be used for purposes of discrimination against the Union.

Section V. Term: This Agreement shall be and remain in full force and effect from the date hereof, and for one year thereafter, except as the same may be enlarged, modified or changed by written Agreement provided for
117 in Paragraph 3, hereinabove.

In Witness Whereof, the parties hereto have executed this Agreement this 18 day of April A. D. 1938.

Amalgamated Dairy Workers, L. I. U. No. 819.
By: Nicholas R. Kost, Jr.,
Pres.
Joe J. Igoe,
Secy. & Treas.
C. R. Zalewski,
Rec. Sec'y.
John E. Igoe,
Vice Pres.

Company.
Lake Valley Farm Prod., Inc.
By: Siegfried Weiss
Pres.
Joseph Kaiser
Vice Pres.

123 And on, to wit, the 6th day of August, 1938, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain EXHIBIT NO. 5, in words and figures following, to wit:

124 ARTICLES OF AGREEMENT.

This Agreement made and entered into by and between Wagner Dairy Products, a private enterprise hereinafter
(Name of Dairy)
referred to as the "Company", and the Amalgamated Dairy Workers L. I. U. No. 819, affiliate of the Committee for Industrial Organization, hereinafter referred to as the "Union".

Section I. It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationships between the Company's

employees and the Company, and to set forth herein an Agreement to be observed between the parties hereto.

The term "employee", as used in this Agreement shall mean all wholesale and retail route salesman or drivers and their helpers and assistants; all milk distributors commonly referred to as "Vendors"; all persons employed in the sale and distribution of the Company's products; all pasteurizers, bottlers, helpers and other inside dairy workers; all office and clerical employees; together with all other persons employed either inside or outside by the Company, in the conduct of its business in any capacity whatsoever.

Section II. Recognition: The Company recognizes the Union as the sole collective bargaining agency for its employees, and agrees not to maintain in its employ any person or individual who is not a member in good standing of the Union. The Company further agrees not to engage, hire, or contract with any persons or individuals whose engagement, hiring, or contract will make them an employee of the Company, or vendors as above, unless such persons or individuals apply and are accepted into membership in the Union within forty-eight (48) hours after they have become employees of the Company, or receive the products of the Company. This procedure shall be binding upon the Company during the life of this Agreement.

The Union agrees that so long as the Company shall
125 comply with the terms hereof, and with the terms of all such additional agreements as there may hereafter be, that it will recognize the Company as a "Union Dairy", and that the Company shall be permitted to use the Union Label and other Union insignia. These conditions shall be binding upon the Union during the life of this Agreement.

Section III. Procedure: Within sixty (60) days after the Company and the Union have signed this Agreement, representatives of the Company and other dairies signing similar agreements, and of the Union, shall meet to negotiate all questions of wages, hours and conditions of employment that shall prevail in the Companies' business. Matters on which the Companies and the Union agree shall be put into writing in Agreements, which shall be in full force and effect for one year after they are negotiated and signed, and which will carry provisions for renewal or amendment upon their expiration.

In the event that within ten days after negotiations are opened for formulating an agreement as to wages, hours and conditions of employment, there are still questions undetermined between the Companies and the Union, the

matter shall then be appealed to an impartial Board of Arbitration, consisting of three members, one member to be selected by the Companies, one member to be selected by the Union, and the third member to be chosen by the first two members. The decision of the majority of the said arbitrators shall be final, and be binding upon both parties hereto, and upon all other dairies involved.

Section IV. Management. The management of the Companies' business and the direction of their employees, including the right to hire (subject to the terms of this and future Agreements), suspend or discharge for proper cause, or transfer, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company, provided that this will not be used for purposes of discrimination against the Union.

Section V. Term: This Agreement shall be and remain in full force and effect from the date hereof, and for one year thereafter, except as the same may be enlarged, modified or changed by written Agreement provided for in
126 Paragraph 3, hereinabove.

In Witness Whereof, the parties hereto have executed this Agreement this 3rd day of May A. D. 1938.

Amalgamated Dairy Workers, L. I. U. No. 819,
By: Nichols P. Kost, Jr.
Pres.

John E. Igoe
Vice Pres.

Cass R. Zalewski
Recd. Sec.

Joe J. Igoe
Secy. & Treas.

Company.
Wagner Dairy Products
By Frank Wagner

127 And on, to wit, the 6th day of August, 1938, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Exhibit No. 7, in words and figures following, to wit:

128 PLAINTIFFS' EXHIBIT NO. 7.

Constitution of Amalgamated Dairy Workers Local Industrial Union No. 819.

Affiliate of Committee for Industrial Organization.

Article I.—Name and Affiliation.

Section 1.—This Union shall be known as the Amalgamated Dairy Workers, Local Industrial Union No. 819, of Chicago, Illinois. It shall be affiliated with the Committee for Industrial Organization in accordance with the terms of the charter granted by the Committee for Industrial Organization.

Article II.—Objects.

Section 1.—It shall be the object of the Union to secure a comfortable living, shorter hours, improved working conditions and security for its members, in other ways to protect, maintain and advance their interests, and to organize the unorganized in conformity with its jurisdiction.

Article III.—Membership.

Section 1.—The membership of the Union shall include workers employed in and around dairies and all businesses dealing in the processing, sale and distribution of milk and milk products

Article IV.—Officers.

Section 1.—The officers of the Union shall be a President, Vice-President, Recording Secretary, Financial Secretary, Treasurer, Sergeant-At-Arms, three Trustees and one Counsellor, and an Executive Board composed of the President, Vice-President, Recording Secretary, Financial Treasurer, and Counsellor.

Election of Officers.

Section 2.—For the initial and organizational period of operation, the calling of election of officers shall be vested in the sole discretion of the executive Board provided, however, that said election shall be called within three years after the date of the adoption of this constitution; and provided that an election of officers may be called in April of any year hereafter, at the request of fifty (50%) per cent

of the members; thereafter the officers shall be elected at the first (1st) membership meeting in the month of
129 April of each year, and shall hold office for a term of twelve months.

Section 3.—The Trustees shall be appointed by the Executive Board, and shall normally hold office for three years, and at the first regular election one Trustee shall be elected for a term of one year, one for two years, and one for three years.

Section 4.—Nominations for officers shall be made at a meeting of the Union at least seven days before the meeting at which elections are held, and members shall be properly informed of the coming election and of the nominations made.

Section 5.—Only members in good standing shall be eligible for office.

Section 6.—Elections shall be by secret ballot, and it shall require a majority of votes cast to elect.

Section 7.—Before a vote is taken, it shall be the duty of the President to appoint two or more tellers to see that the ballots are properly counted, and to safeguard the secrecy and honesty of the vote.

Section 8.—At the expiration of the term of office, by termination or otherwise, of any officer, he shall turn over to his successor all money, property, papers, records and books of the Union that may be in his possession.

Section 9.—Upon the death, resignation, or removal for cause of any officer, it shall be the duty of the Executive Board to order an election to fill such vacancy.

130-131 (Omitted pursuant to stipulation filed March 16, 1939.)

132 Article VII.—Committees.

Section 1. The Standing Committees shall consist of:
Organizing Committee.
Activities Committee.
Working Rules Committee.
Bargaining Committee.

Section 2. Special Committees may be elected or appointed as need arises.

Section 3. The members of the Standing Committees, shall be appointed by the President, subject to the approval of the Executive Board. The members of each Standing Committee shall elect a permanent Chairman.

Organizing Committee.

Section 4. The Organizing Committee shall have the duty of:

(a) Extending unionism throughout the jurisdiction of the Union, through such methods as house-to-house canvassing, meetings, and distribution of literature.

(b) Passing on applications for membership through a Membership Sub-Committee.

Activities Committee.

Section 5. The Activities Committee shall have the duty of:

(a) Studying the question of activities that will increase the value of the Union to its members and that will serve to make union membership more attractive, such as entertainment, education, athletics, social activities, relief and welfare and the promotion of union-made goods.

(b) Conducting activities and projects along the above lines decided upon by the membership, enlisting the services of the membership to that end.

(c) Conducting money raising activities recommended by the Executive Board, and subject to the approval of the membership.

133 Working Rules Committee.

Section 6. The Working Rules Committee shall have the duty of:

(a) Drawing up and submitting to the Union rules that will be to the best interests of the Union and its members.

(b) Recommending action in regard to amendments to the Constitution and Standing Rules of the Union.

(c) Investigating and making recommendations in regard to any motion, question or other matter referred to it involving constitutionality, legality or advisability.

(d) Checking on the qualifications under the Constitution of nominees for office.

Bargaining Committee.

Section 7. If necessary, a Bargaining Committee may be created for each plant or establishment, except in the case of small ones.

Section 8. It shall be the duty of the Bargaining Committee:

(a) To negotiate agreements with management, and to

confer with management on grievances or problems that cannot be settled by Shop Committeemen.

(b) To supervise and coordinate the work of Shop Committeemen.

(c) To compile necessary information on wages and other conditions of work for use in negotiations or that may be requested by the C. I. O.

Article VIII.—Membership Meetings.

Section 1. Regular membership meetings of the Union shall be held at least once a month.

Section 2. At any meeting the members present by majority vote may ratify or reject any act of the Executive Board, of any other official body of the Union, or of any of the officers or agents of the Union, which shall be submitted to the meeting, provided that such action is not in violation of the Union's Constitution or the rules of the C. I. O.

134 Article IX.—Initiation Fees, Dues and Assessments.

Section 1. Initiation fees, dues and per capita to the C. I. O. shall be collected and paid in accordance with the rules of the C. I. O.

Section 2. The Union may from time to time levy and collect an assessment or tax on its membership.

Section 3. The Financial Secretary shall provide proper receipt for the tax or assessment, and shall properly record all payments made.

Article X.—Loss of Membership, Reinstatement.

Section 1. Members who are employed all or part of the time must pay dues in advance. Working members are not in good standing who owe one month's dues.

Section 2. Any member who shall fail to pay dues for a period of three months without exoneration shall be notified by the Financial Secretary. If such delinquent fails to place himself in good standing within 30 days from such notice, he shall lose his membership.

Section 3. Any member who has thus been dropped from membership can be reinstated only by paying the regular initiation fee and charges together with all the money due the Union at the time his name was dropped and all dues that have accrued to time of reinstatement, unless otherwise decided by the Union.

Article XI.—Charges and Trials.

Section 1. Any member may prefer charges against any other member or officer of the Union. Such charges must be in writing, and the accused shall have the right to a fair hearing.

Article XII.—Strikes.

Section 1. When a controversy develops between the Union and an employer or association of employers which may result in a strike or a lockout, the Bargaining Committee or Committees shall confer with the representatives of the employer or employers to endeavor to secure an amicable settlement. Should no adjustment prove possible, then a strike may be called after a special meeting of the members and upon a vote in favor of a strike by a majority of the members present. This vote shall be by secret ballot.

A full report shall be submitted to the Regional Di-
135 rector of the C. I. O. or some other authorized repre-
sentative of the C. I. O. for his approval in accordance with the C. I. O. Rules.

Section 2. Before a strike shall be declared off, a special meeting of the Union shall be called for that purpose, and it shall require a majority vote, by ballot, of all members present to decide either way, except that a strike may be declared off by the Executive Board in cases where immediate action is required.

Article XIII.—Union Label.

Section 1. Any officer or member of the Union who illegally issues or supplies, or aids in illegally issuing or supplying a union label, shall be legally prosecuted and shall be barred from membership in the Union.

Article XIV.—Amendments.

Section 1. The Constitution may be amended by a two-thirds vote at any regular meeting of the Union if the amendment to be voted on has been read aloud at the preceding meeting or the membership have been notified in writing of the proposed amendment four days in advance.

Article XV.—Standing Rules.

Section 1. The Standing Rules of the Union may be changed by majority vote at any meeting without advance notice.

136 Standing Rules for Amalgamated Dairy Workers, L. I. U. No. 819.

Part A—Membership.

Rule 1. Candidates for membership shall make written application for memberships to be approved by the Union. It shall require majority approval of a membership meeting to elect a candidate to membership, providing that, for reasons of secrecy, the meeting may by a two-thirds vote waive such action on candidates and take individual action only on persons whose applications are questioned by the Membership Sub-Committee.

Rule 2. New members, before being admitted to full membership, shall make the following affirmation:

"I do sincerely promise, of my own free will, to abide by the laws of the Union; to bear true allegiance to, and keep inviolate the principles of the Committee for Industrial Organization; never to discriminate against a fellow worker on account of creed, color, or nationality; to defend freedom of thought, whether expressed by tongue or pen, to defend on all occasions and to the extent of my ability the members of our organization.

"That I will assist all members of our organization to obtain the highest wages possible for their work; that I will not accept a brother's job who is idle for advancing the interests of the Union or seeking better remuneration for his labor; and as only by standing together can workers improve their lot, I promise to cease work at any time I am called upon by the organization to do so. And I further promise to help and assist all brothers in adversity, and to have all eligible workers join the Union that we may all be able to enjoy the fruits of our labor; and that I will never knowingly wrong a brother or see him wronged, if I can prevent it.

"To all this I pledge my honor to observe and keep as long as life remains, or until I am absolved by the Union or the Committee for Industrial Organization."

Part B—Officers.

Rule 1. Before entering upon the duties of their re-
137 spective offices, the newly elected officers shall make the following affirmation:

"I, ..., do hereby sincerely pledge my honor to perform the duties of my office as required by

the laws of the Union and of the Committee for Industrial Organization, and to bear true allegiance to this Union and to the C. I. O. I will deliver to my successor in office all books and other property of the Union that may be in my possession at the close of my official term. All of this I solemnly promise, with full knowledge that to violate this pledge is to stamp me as a person devoid of principle and destitute of honor."

Rule 2. Installation of officers shall take place at the first meeting after election of officers.

Vacancies.

* * * * * *

139 Part G.—Membership Meetings.

Rule 1. Regular membership meetings shall be held on the ..... of each month, without the necessity of special notice therefor.

Rule 2. The hour of meeting shall be promptly at eight o'clock P. M.

Rule 3. Business can be carried on legally only when a quorum of ten members is present.

Rule 4. Special meetings may be called upon due notice by the Executive Board or at the request of 25 per cent of the members. The Recording Secretary shall notify all members of a special meeting at least 12 hours before it convenes.

Rule 5. Membership meetings shall be conducted in accordance with Robert's Rules of Order, except as may be otherwise provided herein.

Rule 6. A time limit of five minutes shall be placed on reports of Committee Chairmen and on discussion by any member, provided that a longer time may be allowed by a two-thirds vote of the members present.

140-141 (Omitted pursuant to stipulation filed March 16, 1939.)

177 And on, to wit, the 18th day of August, 1938, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Exhibit No. 3, in words and figures following, to wit:

178 DEFENDANTS' EXHIBIT 3.

Filed Aug 18 1938 at ..... O'clock ..... Henry W. Freeman, Clerk.

Milk Wagon Drivers' Union
Local 753 I. B. of T., C., S. & H. of A.

Articles of Agreement

Article 1. Between ....., milk dealer, party of the first part, hereinafter called the employer, and the Milk Wagon Drivers' Union, I. B. of T., C., S. and H. of A., party of the second part, hereinafter called the Union.

Article 2. The employer, party of the first part, agrees to hire members of the Union carrying the regular working card of the organization, or those who will become members within thirty days after taking such position.

Article 3. It is agreed and understood by the parties herein mentioned, that the hours for delivering milk for the summer period during the life of this agreement shall be from the third Sunday in June, to the five days preceding Labor Day, from any time in the morning that the business may require, until 12 o'clock noon. All wagons must be off the street by one o'clock.

Article 4. From Labor Day to the third Sunday in June, for the winter period, no wagons shall be allowed on the street before 7 A. M., and deliveries shall not begin before 8 A. M. All wagons must be off the street by 5 P. M. during this period. A district bounded on the north by Chicago Ave., on the west by Halsted St., on the south by Roosevelt Road (it is understood that the word street means customers on both sides of the street), shall not be regulated by the rule prescribed for the period from Labor Day. Trade in this territory shall be supplied from any time in the morning that the business may require, until 12 o'clock noon. All wagons must be out of this territory by 1 P. M.

Article 5. It is agreed that all previously experienced employees coming under the jurisdiction of this agreement shall at the end of any fifty-two weeks' service with one firm be entitled to two weeks' vacation with pay. If at the end of fifty-two weeks a driver either resigns or is discharged, he shall have two weeks' pay in lieu of his vaca-

tion. Summer vacation periods shall be scheduled April 1st of each year, to October 1st. Drivers to pick their vacation period by order of seniority. Any driver with previous experience going to work on or before January 1st, shall at the end of fifty-two weeks of continuous service with one firm be entitled to two weeks' vacation, and on April 1st, be entitled to schedule. Men without previous experience do not come under this rule. Such drivers starting to work after October 1st shall not be entitled to schedule for vacation until the second vacation period following.

Article 6. The employer agrees that he will enforce Article 3, except in case of breakdown, accident or delay beyond his control.

Article 7. The Union concedes to the employer the right to make occasional special deliveries to their wholesale trade only. Places that resell milk at retail shall be classed as retail. Only one regular delivery shall be made to the trade.

Article 8. Sunday and legal holidays, except Lincoln's and Washington's birthdays, all wagons shall start any time in the morning that business may require, but not later than 5:00 A. M., and be off the street by 11:00 A. M. Labor Day all wagons shall be off the street by 10:00 A. M.

Article 9. Interest shall be paid on all cash deposits at the rate of four (4) per cent per annum. Should the employer require the driver to give bond the same shall be furnished, the driver to pay one-half the premium.

Article 10. The Union, Local 753, agrees, should charges of drunkenness or dishonesty, incompetency, smoking or drinking while on duty be preferred against any of its members, and such charges are proven, the said member shall be fined or suspended.

Article 11. There shall be a steward at each dairy to see that the members of the Union live up to the rules of the Union and Dairy. Said steward shall be elected by members of the union, working at said dairy, and shall be allowed one day off during the months of January, April, July and October, with pay, for the purpose of collecting dues.

Article 12. In case of lockout or strike of any Union, it shall not be considered a violation of this agreement for the members of this Union to refuse to deliver goods where such controversy is on.

Article 13. The Union agrees at all times, as far as in

its power, to further the interests of the employer. It is mutually agreed between the parties herein named, that the customers and consumers of the employer belong to and are a part of the assets and good-will of the said milk dealer; that the driver solicits, serves and sells such customers and consumers in a representative capacity only and if for any reason whatsoever any member of the said Union terminates his employment or is discharged or dismissed or for any other reason said employment ceases and is terminated, it is understood and agreed that any such driver or his agents shall not call upon, solicit, sell or interfere with or divert the customers or consumers formerly served by him on behalf of his former employer for a period of two (2) years from the date of his termination of employment.

It is further understood that if a driver were to resign as a member of the Union, in no event would this abrogate the agreement until the space of the two (2) years from the date of his resignation or discharge has elapsed.

The Union shall not be required to pay any costs of any proceedings relative to the procuring of any order restraining a driver from "stripping his route." The party of the first part shall advance any and all costs necessary relative thereto, and party of the second part agrees to abide by Article No. 13.

The provisions of this paragraph shall be suspended in the event of, and during a general strike by the members of the Union.

Article 14. It is further agreed by the employer that when a route is split, the driver whose route is so divided shall have first choice of the two routes with full pay for the six months following, to be governed by the thirty days' average sales previous to dividing said route.

Article 15. Should any member of this Union be suspended or expelled from the Union for good cause, the employer agrees to discharge such person within fifteen days after receiving due notice from the officials of the Union.

179 Article 16. It is further agreed by the employer that drivers shall be allowed to drive in, unload their returns, and settle their accounts as soon as their routes are properly finished. Only milk and ice trucks to have the right of way in loading and unloading.

Article 17. All trucks used in carrying milk to and from trains and supplying manufacturing concerns, which are not or cannot be supplied by the regular route men or

salesmen, shall not be controlled by the rules prescribed in Article 3; said truckmen shall not be regular route men.

Article 18. Route foremen, route inspectors, routemen, truck drivers, helpers, extra men, and special delivery men shall become members of the Union who spend 51 per cent of their time driving.

Article 19. Should any controversy arise not provided for in these Articles, it shall be submitted to a committee of five for arbitration, two to be selected by the first party, two by the second party, and the fifth by the first four. During such time as the matter is pending there shall be no lockout or strike. The decision of said committee to be final.

Article 20. It is agreed by the Union that any driver wishing to quit his position must give his employer one week's notice. It is agreed by the employer that if he wishes to discharge a driver he will give him one week's notice.

Article 21. At the expiration of the week the driver shall receive all money due him and on request be issued a statement in reference to his character and services.

Article 22. It is further agreed by the employer that no employee will be asked to make any written or verbal contract which may conflict with this agreement.

Article 23. Any employe found guilty of taking lanterns, cans, whips, blankets or any other articles from wagons of other employes shall be fined not less than Five ($5.00) Dollars for each offense.

Article 24. Any question pertaining to Article 3 or 4 shall be referred to a committee from the employers and from the employes. The decision to be binding on both parties to this contract.

Wage Scale—Average Wage

In Effect May 1st, 1937, to September 1, 1937

	Per Week	Per Day	7 Day Week
Retail route men	$45.00	$7.50	$52.50
Inexperienced men	44.00	7.33	51.33
Route foremen	51.00	8.50	59.50
Auto trucks (night work)	50.00	8.33	58.33
Auto trucks (day work)	49.00	8.17	57.17
Truck drivers (night work minimum)	46.00	7.67	53.67
Truck drivers (3 and 4 horse teams, nights)	48.00	8.00	56.00

	Per Week	Per Day	7 Day Week
Truck drivers (day work)	44.00	7.33	51.33
Special and extra men	44.00	7.33	51.33
Wholesale drivers (not receiving commission)	48.00	8.00	56.00
Wholesale drivers (receiving commission)	46.50	7.75	54.25
Assistant route foremen	49.00	8.17	57.17

Commissions to be figured at 60c per hundred over 1,333 points on seven (7) day routes and over 1,142 points on six (6) day routes.

In Effect September 1st, 1937, to May 1st, 1938

Retail route men	$45.00	$7.50	$52.50
Inexperienced men	44.00	7.33	51.33
Route foremen	52.00	8.67	60.67
Auto trucks (night work)	50.00	8.33	58.33
Auto trucks (day work)	49.00	8.17	57.17
Truck drivers (night work minimum)	46.00	7.67	53.67
Truck drivers (3 and 4 horse teams, nights)	48.00	8.00	56.00
Truck drivers (day work)	44.00	7.33	51.33
Special and extra men	44.00	7.33	51.33
Wholesale drivers (not receiving commission)	49.00	8.17	57.17
Wholesale drivers (receiving commission)	46.50	7.75	54.25
Assistant route foremen	50.00	8.33	58.33

Commissions to be figured at 75c per hundred over 1,333 points, on seven (7) day routes, and over 1,142 points on six (6) day routes, up to 4,000 points per week. Over 4,000 points at 90c per hundred.

180 In Effect May 1st, 1938, to May 1st, 1940

Retail route men	$48.00	$8.00	$56.00
Inexperienced men	47.00	7.83	54.83
Route foremen	55.00	9.17	64.17
Auto trucks (night work)	53.00	8.83	61.83
Auto trucks (day work)	52.00	8.67	60.67
Truck drivers (night work minimum)	49.00	8.17	57.17
Truck drivers (3 and 4 horse teams, nights)	51.00	8.50	59.50

	Per Week	Per Day	7 Day Week
Truck drivers (day work)	47.00	7.83	54.83
Special and extra men	47.00	7.83	54.83
Wholesale drivers (not receiving commission)	52.00	8.67	60.67
Wholesale drivers (receiving commission)	49.50	8.25	57.75
Assistant route foremen	53.00	8.83	61.83

Commissions to be figured at 75c per hundred over 1,333 points, on seven (7) day routes, and over 1,142 points on six (6) day routes, up to 4,000 points per week. Over 4,000 points at 90c per hundred.

Article 25. All employees coming under the jurisdiction of the Milk Wagon Drivers' Union, Local 753, I. B. of T., C., S. and H. of A., shall be entitled to a six-day week, seniority to prevail in the selection of days off. If it is impossible to give an employee his day off each week he shall receive one extra day's pay at the prevailing rate of wages. Employees to have their day off except June, July and August. Any man declaring he wishes to have his day off in June, July and August shall not be compelled to work.

Article 26. All retail routemen will receive a commission as specified in scales on all goods sold over a base of 1,333 points per week. Six day routes to be figured on a base of 1,142 points per week. All inexperienced milk wagon drivers' salaries will be One Dollar ($1.00) a week less for the first thirteen weeks.

Article 27. Commissions on butter sold at retail shall be one cent per pound. Commissions on eggs, one cent per dozen. Commissions on cheese, one cent per jar of 1 pound or less; in larger quantities, one cent per pound at retail. Such commissions must be paid over and above guaranteed salary. All commissions to be paid monthly not later than the fourth pay day of the following month.

Article 28. A point of goods sold on retail wagons shall consist of one quart of milk, one pint of milk, four half-pints of milk, three one-third quarts of milk, one quart of skim, one-half pint or two gills of cream, one quart of buttermilk. Commission on schools served by either retail or wholesale wagons.

Article 29. All goods sold from retail routes to be classed as retail.

Article 30. All guaranteed salary due shall be paid on Thursday for the preceding week ending Saturday.

Article 31. Route foremen shall receive a guarantee of wages as specified in above scales. Assistant route foremen shall receive wages as specified in above scales. Any foreman receiving more than the scale shall have that amount added to his guarantee.

Article 32. All drivers of auto trucks shall receive wages as specified in above scales. Eight (8) hours shall constitute a day's work for night men, and nine (9) hours shall constitute a day's work for day men. All drivers of auto trucks who begin work at 4 P. M. or thereafter shall be considered night truckmen. All drivers who begin at 4 A. M. or thereafter will be considered day truckmen.

Article 33. Any route man absent from his route for a period of not more than 14 days shall receive the commission from same; after that period commission is to be paid to whoever is on the route.

Article 34. If route foremen are required to serve two routes alone in one day they shall receive one extra day's pay as compensation. If a route man is required to go out on a second route in one day he shall receive one extra day's wages for same.

Article 35. Any route man or route foreman shall pay all shortage at the end of each month; if over, he shall be given credit for same.

Article 36. All stolen, broken, spilled or sour goods to be allowed daily, upon proper evidence.

Article 37. All truck drivers who do night trucking shall receive minimum wages as specified above. Eight (8) hours shall constitute a day's work for night men.

Article 38. All other truck drivers shall receive wages as specified in above scales, nine (9) hours to constitute a day's work.

Article 39. Special men, and extra men, to receive wages as specified in above scales, eight (8) hours to constitute a day's work for night men and nine (9) hours for day men.

Article 40. Time and one-half shall be paid for all overtime except in cases of breakdowns or delay beyond the control of the employer.

Article 41. Wholesale drivers shall receive wages as specified in above scales. Any wholesale driver receiving more than the scale shall have that amount added to his guarantee.

Article 42. It is also agreed that during the life of this agreement there shall be no so-called "hired solicitors" in the employ of the party of the first part. Helpers on wagons or trucks, wholesale or retail, absolutely prohibited.

181 Article 43. Any firm wishing drivers to wear uniforms, shall furnish same and k ep them laundered and in repair free of charge, and must bear the Union Label.

Article 44. This Agreement shall go into effect May 1st, 1937, and continue in full force and effect until May 1st, 1940, and will continue thereafter unless notice is given by either party Thirty (30) days prior to May 1st, 1940, or thirty (30) days prior to May 1st in any year thereafter.

Union:

.....

President.

.....

Secretary-Treasurer.

Employers:

.....

.....

(Union Label) 228

182 And on, to wit, the 18th day of August, 1938, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Exhibits Nos. 5, 6 and 7, in words and figures following, to wit:

183 DEFENDANTS' EXHIBIT 5.

184 Constitution and By-Laws

of the

International
Brotherhood of Teamsters
Chauffeurs, Stablemen
and Helpers
of America

(Cut)

Affiliated with the American Federation of Labor
Adopted at the Convention held in Portland, Oregon,
September 9th to 13th, inclusive, 1935
In full force and effect on and after December 1, 1935
(Typographical Union Label) 81

Preamble

As almost every improvement in the condition of the working people was accomplished by the efforts of organized labor, and as the welfare of the members of a craft can best be protected and advanced by their united action in one great labor organization, we have organized the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, under the American Federation of Labor, and adopt the following constitution:

185 Constitution

of the

International Brotherhood of
Teamsters, Chauffeurs, Stablemen
and Helpers

Name

Section 1. This organization shall be known as the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers and shall consist of an unlimited number of Local Unions chartered by the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers.

Objects

Sec. 2. To organize under one banner all workmen engaged in the craft, and to educate them to co-operate in every movement which tends to benefit the organization; to impress upon the teamsters, chauffeurs and the public that a profitable teamster, chauffeur or stableman must be honest, sober, intelligent and naturally adapted to the business; to teach them to take advantage of their industrial position and to build up and perfect an impregnable labor organization; to improve the industry by increasing the efficiency of the service and creating a feeling of confidence and good will between employer and employee which will prevent a recurrence of the unnecessary conflicts which have arisen in the past and to co-operate and deal fairly and honestly with all employers who are willing to investigate and adjust difficulties which may arise, and to secure for the teamsters, chauffeurs, stablemen and helpers reasonable hours, fair wages and proper working conditions.

Jurisdiction

Sec. 3. This organization has jurisdiction over all teamsters and helpers, chauffeurs and helpers, stablemen and all who are employed on horses, harness, carriages or automobiles, in and around stables or garages, other than mechanics. Dairy employees are classified as helpers and are eligible for membership.

Sec. 4. No person shall be entitled to membership in this organization who owns or operates more than one team or vehicle. The General Executive Board, when they deem it advisable or for the best interest of our International Union and upon the recommendation of the Local Union, may allow a man to own more than one team or vehicle and hold membership, provided that he hires or employs none but members of our International Union and that he drives a vehicle himself and pays the driver the prevailing rate of wages in the locality.

Any man owning and operating but one team or automobile is entitled to membership in our organization. This will also permit the owner of one team or automobile to hire a helper in case he is sick or disabled or working for his Local Union or for the International Union. He
186 may get a substitute to work for him, but the substitute must be a member of the International Organization. Individual owners shall not be permitted to vote on a strike involving journeymen, nor shall they be permitted to vote

on wages and working conditions of journeymen drivers, chauffeurs, or helpers.

Any member of the International organization going to work at another craft must be given an honorable withdrawal card, and cannot remain a member of the International organization.

Any ex-member out on withdrawal card and working under the jurisdiction of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers must re-deposit his withdrawal card with the local from which it was issued and transfer into the Local Union under whose jurisdiction he is working, if one exists in the city in which he is employed. Failure to comply with this rule cancels his withdrawal card.

Local Unions are not compelled to accept withdrawal cards if member has committed any offense while out on withdrawal card which would be injurious to union principles. Also if local union is paying benefits and member has fallen into bad health or is liable to become a charge against the local or International Union, acceptance of withdrawal card can be refused by Local Union.

Any Local Union of the International Brotherhood of Teamsters, Chauffeurs and Stablemen, who by their charters have been granted jurisdiction over teamsters of any craft, shall also have jurisdiction over all chauffeurs working at the same craft.

To be eligible for election to any office of Local Union or International Union a member must be in continuous good standing for a period of one year prior to nomination for said office. This does not apply to newly organized local unions except as follows: Local Unions organized for less than one year an individual must be a member and in continuous good standing for at least half of the period of time since local union was chartered by International Union. To be eligible to hold office in a Local Union a member must be a citizen of the country in which his Local Union is located.

No member of the Communist Party shall be allowed to hold membership or be admitted to membership in any Local Union of the International Organization. If by false statements such individual has obtained membership he shall be expelled. It is not necessary that the individual charged with membership in the Communist Party admit his membership in said party. If the Local Union Executive Board, by majority vote, are satisfied by the evidence presented that the individual is a member of the Communist Party or any branch of the Communist Party, the Local

Executive Board shall have the power to expel such individual after he has obtained a proper trial in accordance with our laws, from the Local Executive Board.

The action of the Local Executive Board is final and binding, with the understanding that either party has the right to appeal to the Joint Council if one exists in the district. If there is no Joint Council then either party has the right to appeal from the decision of the Local Execu-
187 tive Board to the International Executive Board. If charges are against a member of the Local Executive Board, said member cannot act as a part of the Trial Board, but a substitute shall be appointed by the Joint Council if there is one in the district. If not, the General President shall delegate someone to select a member from any Local Union in the district to act on the Local Executive Board.

216 DEFENDANT'S EXHIBIT NO. 6.

Filed Aug. 18, 1938.

By-Laws of Milk Wagon Drivers.

(Cut)

Local Union No 753.
I. B. of T., C., S. and H. of A.
A. F. of L.
220 South Ashland Blvd.
Phone Monroe 7344

In Effect January 1st, 1934.

217 By-Laws

Section 1. This organization shall be known as the Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America.

Preamble

Sec. 2. As almost every improvement in the condition of the working people was accomplished by the efforts of organized labor, and as the welfare of the individuals engaged in the milk industry can best be protected and advanced by their united action in one body, this organization was born Sept. 13, 1902, with the following objects in view:

Sec. 3. To organize all the workmen engaged in the milk industry and to educate them to co-operate in every movement which tends to benefit the organization; to impress upon our members and the public that our members must be honest, sober, intelligent and naturally adapted to the business; to teach them to take advantage of their industrial position and to build up and perfect an impregnable labor organization, and to secure the best possible conditions for our membership.

218 Sec. 4. To further these objects, we ask our members to be loyal trade unionists and to give this organization their full support and, although we do not believe in political action in our meetings, we ask that you study thoroughly the political situation and vote for the men who, not by promise but by action show that they are willing to stand for and fight the battles of the working class, and it is your duty to see that the following constitution and by-laws are enforced.

Organization

Sec. 5. This Union was organized for the purpose of bettering the conditions of the milk industry, and we therefore claim trade jurisdiction over all persons engaged in the craft, in Cook County and vicinity.

All drivers must become members of the Union; this includes owners and stockholders who drive or act as route inspectors.

Application for Membership

Sec. 6. The admission fee to this union shall be $100.00, subject to change by a two-thirds vote of the union.

Sec. 7. No person shall be accepted as a member other than a citizen or one who has made application for citizenship. Any person who desires to become a member of the local union must fill out the regular application blank and sign his name to it and have the same certified to by a member in good standing as voucher for the applicant's fitness to become a member, and after being passed upon it shall be filed by the Secretary-Treasurer for future reference.

No member of the Communist party shall be allowed to hold membership in this Local Union. If by false statement such member has obtained membership he shall be expelled. It is not necessary that the member admit such membership in the Communist party. If the Executive Board of this Local Union feels that the evidence tends to show membership in the Communist party, the member so charged with such membership shall be expelled from this Local Union.

Sec. 8. The applicant cannot be initiated until the initiation fee has been paid in full.

Sec. 9. The Business Representative may take applications without using the regular application blanks, but must give a receipt for all moneys collected, keeping duplicate of same

219 An applicant rejected by the union shall have his money returned providing he has not worked more than 30 days in the craft.

If applicant cannot hold his position on account of failure to give bond, or otherwise, and has not worked more than 30 days, or if he has to quit the craft before initiated, on account of sickness, the Executive Board shall have full power to return to him the initiation or any part of it they deem just.

An applicant cannot be initiated on days of election.

The Business Representatives having solicited a driver to join the union, and said driver continues to work at the craft three months longer and does not become a member, he cannot thereafter work at an organized plant and will not be taken into membership.

A member of Local 753, who works in a craft which is organized, or trying to organize, must join the organization and keep his dues paid.

Failure to comply with this by-law bars the member from returning to Local 753 or craft. This includes members who are out on Withdrawal Cards.

Quorum

Sec. 10. A quorum shall consist of seven members in good standing.

Meetings

Sec. 11. The regular meetings shall be held every second Thursday of each month.

Sec. 12. A special meeting can be called by the Executive Board but no business shall be transacted except that named in the call.

Dues and Assessments

The dues are six ($6.00) dollars per month, payable quarterly in advance.

The quarter begins Jan. 1st, April 1st, July 1st, Oct. 1st, but the dues are payable on and after Dec. 1st, March 1st, June 1st, and Sept. 1st, for the advance quarter.

Sec. 13. The union may make such assessments upon its members as the interests of the union shall demand. All assessments and fines shall be charged as dues and must be paid within thirty days after the levying of said fine or assessment but the Executive Board may further extend the time if considered advisable.

220 Sec. 14. And member working at the craft who is more than 90 days in arrears in dues shall stand suspended, and must appear before the Executive Board for disposition of the case.

Delinquencies

Sec. 15. Any member who has been suspended for the non-payment of dues, at a regular meeting, cannot be reinstated unless he pay a new initiation fee, and all the dues charged against him at the time of his suspension.

Fines

Sec. 16. Any member violating any of the rules of this union, shall be suspended from membership or fined at the discretion of the Executive Board.

If a firm is declared unfair by Local 753 the drivers must cease work immediately upon being notified to do so.

A member who continues to work on a struck job shall be fined, suspended or expelled at the discretion of the Executive Board.

Officers

Sec. 17. The officers of the union shall comprise the following: President, Vice-President, Recording Secretary, Secretary-Treasurer, three trustees. In case of a vacancy at any time the President shall appoint a member to act until an election can be held in the regular manner.

Branch Local 1 (Roseland) shall elect three delegates to a State Convention and one (1) delegate to International Convention, and the same for Branch 2 (Evanston). This in no way bars the members of Branch Locals having a vote at the election of main officers of the Union.

Sec. 18. Only members in good standing shall be elegible to hold office. Suspensions or expulsions for any cause, or absence from three succeeding meetings, without sufficient cause, shall forfeit any official position.

Sec. 19. Election shall be by Australian ballot, names to be placed alphabetically on the ballots.

Sec. 20. The President shall appoint tellers and judges who must not be candidates, who shall supervise the election

and count the ballots. Should more ballots appear than there were members voting, the election shall be declared invalid and another vote immediately had. Ballots whose reading is not plain shall be counted void.

221 Sec. 21. No member shall be eligible to hold office in this union who has not been a member of this union in good standing for one year and must show a good, clean record for the past five years. This includes delegates to conventions.

Any member running as a candidate for any elective position such as steward of a barn, delegate, or otherwise, shall and must have the qualification of attending two-third (⅔'s) of the meetings the year preceding any such election.

Dated attendance cards shall be issued only to members attending each meeting, same to be signed and returned to whomsoever the presiding officer may designate. There shall be no deviations from this rule. These cards to be preserved until such time as necessary to determine eligible candidate.

Sec. 22. Candidates receiving greatest number of votes cast, shall be declared elected.

Salaries of Officers

Sec. 23. The officers' salaries shall be fixed by the union at a regular meeting.

Duties of Officers

Sec. 24. The President shall preside at the meetings, appoint all committees, and transact such other business as the Union may direct; sign all orders on the Treasurer authorized by the Union. He shall see that the by-laws are enforced.

Sec. 25. The President shall call the meeting to order promptly, and in case of his absence the Vice-President shall act for him. If both are absent the Recording Secretary shall perform that duty and the Union shall proceed to elect a chairman, who shall conduct the meeting until the arrival of the proper officers.

Sec. 26. It shall be the duty of the Recording Secretary to keep correct account of the minutes.

Sec. 27. The Secretary-Treasurer shall receive and receipt for all moneys due the Union and deposit the same in such bank as the Union may direct, in the name of the Union; pay all bills sanctioned by the Union. He shall keep correct account between the local and its members,

and between the local and the International Union. He shall issue all working cards.

The Secretary-Treasurer must be bonded in a surety
222 company for the sum of not less than $5,000, the amount to be changed from time to time as the organization may require. Premium on bond to be paid by the Union.

Sec. 28. The trustees must turn in to the Union on the first meeting of each month, a correct audit of the Secretary-Treasurer's books for the previous quarter.

Business Representatives

Sec. 29. He shall attend all meetings of the local Union, Joint Council and Executive Board, and receive instructions from them on all business transactions requiring attention. He shall see that all members are in possession of a constitution and understand the rules. He shall attend to all controversies between the members and their employers and engage all legitimate means to adjust a settlement as soon as possible. He shall see that all members live up to the constitution, and collect all fines where the Steward fails to do so within 30 days after a fine has been assessed. He must enforce the by-laws. He shall have charge of organizing and take care of barns placed directly under his control.

Conductor

Sec. 30. The Conductor shall attend all meetings and assist the presiding officer in keeping order and take up the password.

Warden

Sec. 31. The duty of the Warden is to have charge of the inner door, and he shall not permit members without the password, or visitors to enter the hall without consent of the meeting. Should any intoxicated member be allowed to enter, the Warden shall be held responsible.

Executive Board

Sec. 32. The Executive Board shall have power to transact all necessary business of the Union between meetings and to them shall be referred all matters not otherwise disposed of. They shall decide all disputed questions in reference to the Constitution and By-Laws and perform such other duties as the union may require. Executive Board meetings shall be held on the first Thursday of each month.

Sec. 33. The Executive Board shall try all members whom charges have been preferred against, and report their findings at the next regular meeting of the Union.

223 The Executive Board should attend all meetings of the Teamsters' Joint Council.

Sec. 34. The delegates to the Chicago Federation of Labor should attend every meeting.

Stewards and Their Duties

Sec. 35. There shall be Stewards at all dairies except where the Executive Board has ruled otherwise.

Sec. 36. Any dairy not having a Steward and desiring one shall file a written petition with the Secretary-Treasurer, with the name of the member who is wanted for Steward. The petition must be signed by two-thirds of the members in good standing at said dairy. In event of the Steward not being able to look after the interests of the dairy which he represents, there shall be an assistant to him appointed by the Steward, for whom he must be responsible.

Sec. 37. The duty of the Steward shall be to see that the members live up to the rules of the union and of the barn.

He shall not be required to take up any grievance with the employer, but he shall notify one of the Business Representatives, who shall take care of same.

All Stewards shall be required to furnish bond, the union to pay one-half the premium, the Steward the other half.

The Stewart shall collect all money for dues and initiation fees, and turn in same at the office of the union not later than the tenth of each month, or as near that date as possible.

Stewards shall not be held responsible for any member who does not pay his dues on Steward's regular collecting day.

Any member who does not pay his dues to the Steward before he turns in his reports, shall, in order to be in good standing and entitled to sick and death benefit, pay his own dues at the office.

Stewards may hold office so long as they attend to their duties, and do not in any way violate their obligation to the organization.

In order to remove a Steward from office, charges must be preferred against him in writing, and said charges must be proven.

Charges may be for violation of his obligation, or some act in connection with the organization which would unfit him as a steward.

Sec. 38. Stewards shall be allowed compensation as follows:

224 Ten per cent (10%) on all moneys collected for initiation fees and dues.

Committees

Sec. 42. Special committees may be appointed by the President from time to time, as deemed necessary, who shall act promptly on matters referred to them, and who may be discharged at the will of the union.

All committees shall perform the duties assigned them within the time specified and report the result to the union in writing.

Working Rules

Sec. 43. Every member of this union shall be entitled to a fair and impartial trial by the Executive Board for all offenses involving fines, suspensions or expulsion. If fined by the Business Representative, he may appeal his case to the Executive Board.

Sec. 44. No member shall be placed on trial unless charges are preferred duly specifying the grievance and submitted to the Executive Board in writing and signed by two or more members. When this is done, the Secretary-Treasurer shall so notify the accused and the witnesses to appear before the Executive Board of the union, allowing reasonable time for accused to prepare his defense. Should the accused not appear for trial on the date specified in such notice he shall be fined, suspended or expelled as the Board may direct.

Sec. 45. Any member or members preferring charges against another member and not appearing against said member, after being notified to do so on the date of the trial, shall be fined not less than $2.50 for each offense, unless excused by the Executive Board.

Sec. 46. No member of the union shall report to anyone not a member of the private business of the union, on subject of fine not less than $5.00.

Sec. 47. No member of the union shall advise against belonging to the union or sympathize in any way with the proprietors to the detriment of the union.

Sec. 48. All members shall be entitled to appeal from the decision of the Executive Board to the Teamsters' Joint Council.

Sec. 49. A member may be fined from $5 up if proven that he stole from another member.

Sec. 50. No member of this union shall try to disrupt the union or injure it in any shape, form or manner, or persuade members to drop out of the union, on subject of fine of not less than $25.00.

Sec. 51. Any member of this union who is intoxicated or disorderly in the meetings shall be ejected from the hall by the Sergeant-at-Arms.

Members shall not be allowed to smoke in the meetings.

Sec. 52. Any member notified for special meeting and not appearing will have charges preferred against him.

Sec. 53. No member or members of this union shall be permitted to work with an expelled member of non-union driver, unless he signifies his willingness to join the union.

Sec. 54. All members must conform strictly to the schedule of wages.

Sec. 55. Any member found working below the scale of wages which is in the agreement entered into between the union and the proprietors and owners will, upon careful investigation, be fined or suspended.

Sec. 56. Drinking or smoking while on duty is forbidden by the contract with the employers.

Gambling while on duty absolutely prohibited. Men discharged for gambling, drinking or short books have no protection by the union.

Members are prohibited from distributing printed matter, pamphlets, etc.

Any member taking vacation money and no vacation shall pay to the union the two weeks salary.

Sec. 57. It shall be the duty of the Steward or members of each dairy to report or file charges against members breaking the foregoing rules.

Sec. 58. Members leaving the craft must take withdrawal cards in order to stop their dues; otherwise, they will be charged their dues the same as if they were in the craft. Neglect of members not getting withdrawal cards does not exempt them from paying their back dues when they return to the craft.

Sec. 59. The union reserves the right to cancel withdrawal cards, and should any person in legal possession of one violate the constitution or antagonize the principles of trade unionists, his withdrawal cards is by his own act, canceled, and he shall be suspended from the union.

Sec. 60. Any member using profanity in the meeting from any cause whatsoever, shall be fined the sum of $1.00.

Sec. 61. Any member who does not wear his union button in plain sight while on duty shall be fined five ($5) dollars.

226 Sec. 62. It shall be a violation of the rules for members to make two deliveries to their retail trade daily, stores included, and where members are found guilty of such violations they shall be fined not less than ten ($10) dollars for such offense.

The following will be considered as two deliveries to the trade:

1st. After one daily delivery has been made to a customer, to call back daily for bottles.

2nd. After one daily delivery has been made to a retail customer, to call back daily to collect, and leaving milk or cream to said customer.

3rd. After one daily delivery has been made to a retail customer, to call back daily to leave butter.

4th. After one daily delivery has been made to a retail customer, to have customer place a card or sign where it can be seen when passing, and to supply customer when such card or sign is posted.

It shall be a violation of the rules for any member to have a helper on his wagon who makes any deliveries. A substantial fine shall be imposed for each offense.

Two drivers supplying same customer unless one leaves certified only shall be treated as two deliveries.

Sec. 63. Drivers shall be allowed to call back to retail customers to leave butter twice weekly.

Sundays and holidays start early the year around, but wagons must be at car or barn by 11:00 a. m.

Sec. 64. Any member who delivers, solicits or collects, after the hours prescribed by this constitution, shall be fined or suspended at the discretion of the Executive Board.

Sec. 65. Any member preferring charges for violations of Section 65 shall see that the said section has been violated two days in succession.

The proprietor of saloon, poolroom, or the same with restaurant combined, who quits taking milk of a driver because he does not spend money therein, or on account of other business, cannot be supplied by any other driver.

Any driver who supplies such saloon, poolroom, or restaurant, after being notified by the Business Representative to quit, shall, by his own action, stand expelled from the Union.

Labor Day

Sec. 66. Labor Day shall be observed as Labor Day
227 by all the members, and the wagons must be off the street by 10:00 a. m.

Rules of Order

Sec. 67. The Chairman while presiding shall state every question coming before the Union before suffering debate thereon, and immediately before putting it to the vote shall ask, "Is the meeting ready for the question?" Should no member rise to speak and the meeting indicate their readiness, he shall rise to put the question. After he has risen no member shall be permitted to speak upon it.

Sec. 68. When the decision of the Chairman is appealed from, he shall state his decision and the reasons therefor from the chair. The party appealing shall then briefly state the reasons for the appeal, after which, without further debate, the question shall be put thus: Shall the decision of the chair stand as the judgment of the union?

Sec. 69. Every member, while speaking, shall adhere to the question under debate, avoid all personality and indecorous language, as well as any reflection on any member thereof.

Sec. 70. Any member, while speaking, being called to order by another, at the request of the chair, shall cease speaking and be seated until the question of order is determined.

Sec. 71. No member shall speak more than once on the same question until all the members wishing to speak shall have an opportunity to do so, nor more than twice, without the permission of the chair.

Sec. 72. This constitution and by-laws can be amended as follows: Any three members may, over their signature, present to the Union, at any regular meeting, any amendment or alteration to this constitution. And after being read at two regular meetings shall lay over to the next regular meeting, when it shall be voted upon. If the amendment or alteration receives a two-thirds vote it is adopted.

Sec. 73. Any member may call for the division of a question when the sense will admit it.

Sec. 74. The following motions shall have precedence in the order herein named: 1st, to adjourn; 2nd, to close debate; 3rd, to take the previous question; 4th, to lie on the table; 5th, to postpone indefinitely; 6th, to postpone to a definite time; 7th, to refer; 8th, to amend. The first four named shall be decided without debate.

Sec. 75. Every member present shall vote on all 228 questions before the meeting unless personally interested; a motion to excuse a member from voting shall be put without debate.

Sec. 76. No member shall enter or leave the hall during ıe reading of the minutes, admission of new members, in-:allation of officers, or the taking of a question by yeas nd nays; and no member shall be allowed to leave the hall ithout the permission of the presiding officer.

Sec. 77. When a motion has been declared carried or lost y acclamation, any member, before the meeting proceeds) other business, may call for a division.

Sec. 78. The yeas and nays may be called for by two ıembers, and upon the assent of one-third of the members resent, shall be so taken.

Sec. 79. A motion to adjourn having been put and lost, hall not be in order again, providing there is further busi-ess before the meeting, until 15 minutes has elapsed.

Sec. 80. All business done in this union shall be strictly ecret.

Sec. 81. All other proceedings in debate, not herein pro-ided for, to be guided by Robert's Rules of Order. One ap of the mallet shall call to order, three taps to rise.

Order of Business

1. Opening.
2. Roll-call of officers.
3. Reading of minutes of previous meeting; adoption f same.
4. Communications and bills.
5. Initiation.
6. Receipts and expenditures since last meeting.
7. Reading communications from headquarters.
8. Reports of delegates and committees.
9. Does anyone know where employment can be ob-ained, or a brother out of employment?
10. Unfinished business.
11. New business.

229 DEFENDANT'S EXHIBIT NO. 7.

By-Laws
Governing
Sick and Death Benefits
of
Milk Wagon Drivers
(cut)
Local Union No. 753
I. B. of T. C., S. & H. of A.
220 So. Ashland Blvd.
In Effect January 1, 1936
Filed Aug. 18, 1938.

230 Milk Wagon Drivers

The following By-Laws governing Sick and Death Benefits were approved at Regular Meeting of Milk Wagon Drivers' Union, Local No. 753, on December 12th, 1935, and ordered into effect January 1st, 1936, and cancels all previous laws pertaining to Sick and Death Benefits.

Sec. 41. A person cannot be a member of No. 753, until initiated. He is obligated to attend to his own initiation and no other person can be held accountable.

231 Sec. 42. A new member, by initiation, acceptance of transfer, or by reinstatement by local allowing back dues, must be a member one year, before he is entitled to death benefits. After twelve (12) months to the end of twenty-four (24) months the death benefit will be $100.00, from twenty-four (24) months to the end of thirty-six (36) months, $300.00, thereafter $1,000.00. A death benefit will be paid upon presentation of a death certificate, providing the member was in good standing, six months prior to sickness or death.

232 K. A member by initiation, acceptance of transfer, or by reinstatement by local allowing back dues, must be a member one year before he is entitled to sick benefits. A member shall then be entitled in case of sickness, to no more than a maximum of twelve weeks of sick benefit after the first year.

L. And each additional year, up to and including the tenth (10) year of continuous service, will entitle member to an additional twelve (12) weeks of benefit. After ten (10) years continuous employment, in good standing, the member will be entitled to sick benefit the full time he is sick. Sick benefits shall be paid only when member is in good standing six months prior to date of sickness, except as provided in following paragraph.

N. The sick benefit shall be $20.00 per week after the first week of illness or accident, regardless of whether the individual be single or married, or has or has not children.

234 And on, to wit, the 18th day of August, 1938, came the Defendants by their attorneys and filed in the Clerk's Office of said Court their certain Exhibit No. 8, in words and figures following, to wit:

235 DEFENDANT'S EXHIBIT NO. 8.

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois,
Eastern Division.

Edgewater Dairy Company, a corporation, Joliet Dairy Products Company a Corporation, Anton Michalek and Joseph Wagner, Jr., *Plaintiff.* *vs.* Henry A. Wallace, Secretary of Agriculture, etc., Homer J. Cummings, Attorney General of the United States, etc., Dwight H. Green, United States District Attorney, etc., Frank C. Baker, Market Administrator, etc., *Defendants.*	Bill. In Equity No. 13878.
Henry A. Wallace, Secretary of Agriculture, Dwight H. Green, United States District Attorney for the Northern District of Illinois, Eastern Division, *Cross-Plaintiffs.* *vs.* Edgewater Dairy Company, Inc., Joliet Dairy Products Company, Inc., Anton Michalek and Joseph Wagner, Inc., *Cross-Defendants.*	Cross-Bill.

MEMORANDUM.

This cause comes on to be heard upon the motion of the plaintiffs and intervening petitioners for an injunction restraining the enforcement as against them of the "License for Milk—Chicago Sales Area, as Amended," and on the motion of the cross-plaintiffs for an injunction against the plaintiffs and intervening petitioners restraining the violation of said license.

One question before the court concerns itself with the delegation of powers by the Congress to administrative officers. The other question is, Is the action of the Secretary of Agriculture, in issuing the license in question,

found within the powers granted to the Federal Congress in the Commerce Clause of the Constitution? Closely related to this second question is the question, Does the license impinge upon the powers reserved to the States by the Tenth Amendment to the Constitution?

236 The first question, that relating to the delegation of legislative power, was not considered at length upon the oral arguments, presumably because of the court's expressions in the case of *U. S.* v. *Suburban Motor Service Corporation*, 5 Fed. Supp. 798. The question is an important one. Legislative power may, of course, be delegated to administrative officers if the Congress makes a sufficient statement of its policy for the guidance and control of those officers and for the information of those to be affected by the action of the administrative officers. The general subject of the Agricultural Adjustment Act is agricultural commodities prices, and it would seem that one ought, after investigation, to be able to say what the law of the United States is on the subject at a given moment and, with reasonable certainty, what, barring action by the Congress, it is going to be in the future. A person who contemplates the purchase of a dairy farm or a herd of milk cows ought to be able to determine, with reasonable certainty, what laws of the United States or rules and regulations made in pursuance of such laws, barring action by Congress, will regulate or prevent the sale of the milk, cream and butter he proposes to produce. The policy of Congress is stated in the Agricultural Adjustment Act in general language. On behalf of the plaintiffs and intervening petitioners and cross-defendants it is contended that the language is so general that no man can tell what can be done under the act, if valid, or when it will be done. That there is some force in their contention that no one can tell when action will be taken must be conceded when it is observed that the Amended License in question in this case was executed and promulgated on May 31, 1934, to be affective "on and after 12:01 A. M. Eastern Standard Time, June 1, 1934."

However, courts have uniformly been loath to declare acts of Congress unconstitutional because of the delegation of legislative power, and this court feels that it should not hold the act invalid on that ground.

237 The question as to whether or not the action taken by the Secretary of Agriculture, in issuing the license in question, is within the grant of power of the Federal Congress found in the Commerce Clause of the Constitu-

tion was argued by counsel for the Agricultural Adjustment Administration with ability, and logically and persuasively. The difficulty in which the court found itself was that when it went out to the end of the doctrine of delegation of legislative power and then proceeded with counsel in their argument along the doctrine of the power of Congress to regulate interstate commerce, the court came to a point where it felt that it had no solid ground upon which to stand, though it seemed to have come to the point where it found itself logically and without wandering into by-paths. This feeling led the court to consider with care the question as to whether or not the power which has been exercised by the Secretary is within the grant to Congress under the Commerce Clause. Congress itself, so far as the issuing of licenses is concerned, tried to stay within this grant of power, since it provided, in Section 8 of the Agricultural Adjustment Act, that:

"The Secretary of Agriculture shall have power * * * to issue licenses permitting processors, associations of producers, and others to engage in the handling, *in the current of interstate or foreign commerce,* of any agricultural commodity or product thereof, or of any competing commodity or product thereof."

It is said by the Government that 40% of the milk which come into the Chicago sales area is produced in states other than Illinois, and that it is impossible to control the distribution in the Chicago sales area of milk produced outside of Illinois unless the distribution of all of the milk coming into that area is controlled. The plaintiffs and intervening petitioners and cross-defendants, on their part, say that all of the milk which they buy and sell is produced in Illinois, and that it is purchased by them there and sold there. That this is the fact is not seriously disputed by the counsel
238 for the Agricultural Adjustment Administration, though there is an affidavit on file which indicates that a part of the milk sold by one or more of the plaintiffs or intervening petitioners and cross-defendants is produced outside of the state of Illinois. But when the court examines the Amended License in question in this case, it seems to the court that all of these facts are immaterial.

The amended License has three principal purposes, and no others. The first principal purpose is to fix the minimum price at which producers of milk may sell their product. If it be said that the purpose of the license is not to fix the price at which producers may sell their product but is to fix the price which distributors must pay, the answer

is that, while the "License for Milk—Chicago Sales Area, as Amended" is a very complicated document, covering 19 type-written pages, and a considerable portion of those 19 pages relate to price and the determination thereof, yet the price to be paid to any person other than a producer is, so far as the court can discover, mentioned but once, and then in paragraph number "12" of Section A, of Exhibit A, where the price which a distributor must pay to a distributor for milk and cream for Class II use is mentioned and fixed, but even here the purpose carries back to production. The purpose of the paragraph is apparently to give a "two cents per pound of butter fat" advantage to the producer over the distributor who may have Class II milk for sale. The affidavit of E. W. Gaumnitz, Economic Adviser to the Dairy Section of the Agricultural Adjustment Administration, states in respect of paragraph "12":

"This provision is for the purpose of aiding the administration and enforcement of the Class II price to producers."

The second principal purpose of the license is to limit the production of milk by producers thereof by means of assigning to them so-called "bases," and the third principal purpose is to charge the cost of administration under the license to the producers by requiring the distributor to hold back from the producer one cent per hundred weight of milk in the case of producers who are members of the Pure Milk Association (an association of producers) and four cents per hundred weight in the case of producers who are not members of the Pure Milk Association. All other purposes to be found in the license are merely inci-
239 dental to these three principal purposes. In other words, as it seems to the court, the distributor of milk is, by means of the license, made the agency of the Government for the regulation of the production of milk.

It seems clear that the production of milk is not "interstate commerce," and the court's best judgment is that the production of milk does not occur in the "current of interstate commerce," and that it does not "affect interstate commerce" in the sense that those clauses have heretofore been used in the cases. The "License for Milk—Chicago Sales Area, as Amended" in question in this case, seems to the court to be an attempt by the Federal Government to use milk distributors for the purpose of doing what, under the Commerce Clause of the Constitution, the Federal Government has no power to do, and what, under the Tenth Amendment of the Constitution, is reserved for action by the States or the people.

The motion of the plaintiffs and intervening petitioners for an injunction will be granted, that of the cross-plaintiffs for an injunction will be denied.

Counsel may prepare, and on due notice present, a draft of an appropriate order.

John P. Barnes,
Judge.

June 26, 1934.

240 DEFENDANTS' EXHIBIT 8.

Certified Copy D. C. Form No. 30

United States of America
Northern District of Illinois } ss:

I, Henry W. Freeman, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Memorandum, filed June 26, 1934, in the case of Edgewater Dairy Company, a corporation, *et al.* Plaintiffs, *vs.* Henry A. Wallace, Secretary of Agriculture, etc., *et al.* Defendants, Henry A. Wallace, Secretary of Agriculture, *et al.* Cross-Plaintiffs, *vs.* Edgewater Dairy Company, Inc., *et al.* Cross-Defendants, —In Equity, No. 13878, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago this 11th day of June, A. D. 1938.

Henry W. Freeman,
(Seal) *Clerk.*

241 And on, to wit, the 18th day of August, 1938, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Exhibit No. 9, in words and figures following, to wit:

242 DEFENDANTS' EXHIBIT 9.

State of Illinois } ss.
County of Cook }

IN THE SUPERIOR COURT OF COOK COUNTY.

Complaint in Equity

Filed Aug. 18, 1938, Henry W. Freeman, Clerk.

Josef Wagner, Sr. and Lakeview Dairy Company, a corporation,

Plaintiffs,

vs.

International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers Union, an unincorporated association, Daniel Tobin, National President and Thomas L. Hughes, National Secretary of such unincorporated association, in a representative capacity, Milk Drivers' Union of Chicago, Local 753, an unincorporated association, Robert G. Fitchie, James Kennedy, Steve Sumner, F. Ray Bryant, Albert C. Richards, Joseph L. Patterson, Fred C. Dahms, its officers, and in a representative capacity of said incorporated association, Chicago Teamsters, Chauffeurs and Helpers Union of Chicago and Vicinity, Michael Galvin, as President and Secretary, Milton Booth, as Vice President, Thomas Connely, Thomas Doyle, Thomas Keegan, Larry Monahan and William Carron, as Trustees of said unincorporated association, and in a representative capacity, Chicago Milk Drivers and Vendors Union, Local 718, an unincorporated association, Edward Schroeder, James Piscule, Stanley Sitkowski and Gustav Krnak, individually and as members and as representatives of the membership composing such unincorporated association, William Wohlers and M. Mouske, individually and in a representative capacity,

Defendants.

COMPLAINT IN EQUITY.

To the Honorable, the Judges of the Superior Court of Cook County, Sitting in Chancery:

The above named plaintiffs, complain against the above named defendants, jointly and severally, and allege:

244 5. That the plaintiff, Lakeview Dairy Company,

a corporation, is a body corporate, duly organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business and office at 542 Grant Place, in the City of Chicago, County of Cook and State of Illinois; that it conducts a dairy and 245 pasteurization plant, where it handles milk and other dairy products in accordance with the requirements of the Statutes of the State of Illinois and ordinances of various municipalities, in which it transacts business; that it adopts the allegations of this complaint, with regard to the general description of the business conducted by Josef Wagner, Sr., as a sufficiently accurate description of the business enterprise operated by it without repeating same in its behalf; that the business is worth approximately One Hundred Thousand Dollars ($100,000.00); that the shareholders, officers and employees thereof, have been enabled to secure profits, salaries and wages out of the business.

6. That there is now in full force and effect a statute of the State of Illinois providing for pasteurization of dairy products and there are also ordinances of various municipalities of the State of Illinois, likewise regulating pasteurization of dairy products and regulating the manner in which such dairy products are to be handled; that some of such regulations affect the vehicles in which dairy products are hauled and as well the persons employed in such occupations and buildings, machinery and receptacles used in such processing are subject to inspection. That as a result of such regulation, raising the standard of the quality of dairy products, it has become necessary to invest capital in such business and to reorganize the conduct thereof; that a number of years ago there were several thousand persons engaged in the retailing of dairy products to consumers, while now there are less than Two Hundred Fifty (250) persons engaged in the wholesale purchase and sale of dairy products in the City of Chicago; that formerly milk was placed in cans and delivered by the individual farmer to a railroad car at a station and such car was then hauled to the largest centers of population; that formerly milk producers would seek purchasers of such milk among persons who then retailed such milk by selling the same direct from the can or distributing such milk from house to house or from place to place where it would be consumed; that now milk is gathered by collectors from among farmers in a local dis-246 trict, which milk is brought to a central establishment, there to be prepared for shipment and use in

Chicago and vicinity, or is delivered for shipment in trucks carrying a large number of cans which milk is then brought inside of Cook County, and there properly prepared for disposition to retail or in quantities, as is now required to be done by statute and ordinance; that such trucks or vehicles carrying milk in tanks are operated by owners of milk dairies, or their employees or by persons who bring such milk in large tanks or trucks for resale to persons who operate a pasteurization plant and place such prepared milk and other dairy products in bottles for retail disposition or delivery from house to house.

8. That by reason of the changes in the conduct
247 of the dairy business, as stated in this complaint, whereby the rights and interests of the farmer producing dairy products have been affected and the rights and interests of persons employed by him on his farm and the rights and interests of those engaged in the purchase, transportation and disposition of dairy products have been changed and developed and different methods of final disposition of dairy products have been adopted by those engaged in selling dairy products, a conflict of interest has arisen between such individuals. Some of the corporations which are engaged in the dairy business in Chicago and vicinity have endeavored to increase their business by absorbing small dairy establishments of the County of Cook, in order to reduce, as they claim, improper competition; they have purchased the business of persons selling dairy products at retail, by payment of money and stock in the purchasing corporation. In many instances, these places of business have been abandoned but the capitalization has not been decreased.

249 11. Both the plaintiffs states that there is not now any actual dispute between employees of the plaintiffs as to the matters described in this paragraph of the complaint, but recently a disagreement has arisen between plaintiffs and other persons similarly situated, as employers and an organization known as International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers Union and Milk Wagon Drivers' Union of Chicago, Local 753, which organizations are composed of persons who are employees of individuals and corporations engaged in conducting dairy plants, pasteurization plants and in the business of handling milk and dairy products and compose principally of persons engaged in operating vehicles used in the conduct of such business, and the conditions concerning such disagreement which have brought about such disagreement are hereinafter more

fully set forth; that recently employees of the plaintiffs and of other proprietors of dairy plants and pasteurizing plants have become members of an association of working men or trade or labor union under the name and style of "Chicago Milk Drivers and Vendors Union, Local 718;" that said union is not incorporated under any law of the State of Illinois or any other State as far as plaintiffs are able to ascertain.

250 That since the year 1908 there has existed in the City of Chicago an unincorporated association under the name and style of "Chicago Teamsters, Chauffeurs and Helpers Union of Chicago and vicinity," which is a central organization composed of representatives of various unions composed of persons who are engaged as operators of vehicles and of persons working in and about such means of transportation or haulage as are resorted to by proprietors of various businesses or owners of vehicles used in the transportation and said Local Union 718 is affiliated with the last mentioned organization.

253 15. That plaintiffs are advised and informed, and so believe the fact to be, state that since the year 1908, there has existed in the City of Chicago, an unincorporated association under the name and title of "Chicago Teamsters, Chauffeurs and Helpers Union of Chicago and vicinity", the members of which are associated in various subordinate labor or trade unions or associations of working men and "Chicago Milk Drivers and Vendors Union, Local 718" is affiliated with other unions through its representatives in a central governing body of said Chicago Teamsters, Chauffeurs and Helpers Union of Chicago, with a total membership of many thousands, and with a membership of many hundreds in said Local Union 718; that such organization is a bona fide labor union, governed by its own articles of association, by-laws, rules and regulations; that such organization is not affiliated with the American Federation of Labor; that Local

254 Union 718 permits membership to persons known as "Vendors", while Local Union 753 does not accept such persons into membership; that Michael Galvin is President and Secretary of the governing body of the Chicago Teamsters, Chauffeurs and Helpers Union of Chicago and vicinity; that Edward Schroeder, James Piscule, Stanley Sitkowski and Gustav Krnak are members of said Local Union 718; that Edward Schroeder, James Piscule, Stanley Sitkowski and Gustav Krnak are employed with other members of said Union by the plaintiffs herein; that

the persons named in this paragraph as officers and members of said Chicago Teamsters, Chauffeurs and Helpers Union of Chicago and vicinity and of Chicago Milk Drivers and Vendors Union, Local 718 sufficiently represent each of said unincorporated associations and the members thereof with regard to the rights, claims and privileges of said unincorporated associations and the membership thereof, to enable this Court to determine and dispose of the controversy disclosed in this complaint and the plaintiff pray that such unincorporated association may be made a defendant herein through its representatives above named according to the principles of equity practice.

16. That as the result of the existence of the period of depression as the same has been commonly known to exist in the United States, and particularly as the same has affected the dairy industry in the States of Illinois, Wisconsin, Michigan and Indiana and as it has affected the consumers of dairy products, the consumers of dairy products have complained of the prices charged for dairy products by the dealers and distributors of the class described in certain paragraphs of this complaint and named in the schedule attached to this complaint and farmers likewise have complained of the prices received by them for such products, but the consumers have not been able to cause a reduction of the price at which such dairy products are sold, because there was in existence a combination between the Pure Milk Association, acting in behalf of dairy farmers and the existing dealers or distributors operating in the County of Cook and the 255 members of Local Union 753. as represented by its business agents and officers, whereby the price of dairy products was set and controlled by the united action of the persons above named; that within the last several years, a number of persons have entered into the business of purchasing dairy products from dairy farmers or producers, which, after pasteurization have been disposed of at retail and wholesale in opposition to the persons theretofore controlling the price situation in the sale of dairy products in the County of Cook; that the persons so engaged, have been commonly known as "Independent dairies" or pasteurization plants; that various persons have been induced to engage in the disposition of dairy products from store premises, which store premises have been commonly called "Independent stores" or "Cash and carry stores;" that the anxiety of the consumers to secure dairy products at a lower price than that at which

the old established dealers had sold such dairy products, has induced many thousands of consumers to patronize such independents or cash and carry stores and places of business where they could purchase milk in bottles and other dairy products in packages at a lower price than that set by the large incorporated dairies if they came to the stores, made their purchase there and carried such purchased article to their respective homes, and this course of business has become very objectionable to the large corporations, which had theretofore organized and who are maintaining a staff of house to house distributors who operated vehicles to distribute milk in bottles and dairy products in packages; some of the employees of such dealers being members of Local Union 753, represented by said Steve Sumner and his associates.

257 That plaintiffs believe the fact to be that there are several thousand places of business in the City of Chicago, in the County of Cook where milk, cream and buttermilk in bottles may be purchased at retail and other dairy products may be purchased in small package form; that many of such business places obtain their supplies of dairy products from Bordens, Bowmans, Wieland, Wanzer and other of the persons named in the schedule attached to this complaint, being of the class of business enterprises that have developed the sale of milk by house to house delivery in their own vehicles; while other persons are purchasing dairy products from that class of wholesale dealers known as the "Independents" who are not affiliated with those wholesalers who have an association of their own for the purpose of regulating the sale price of such dairy products; that the cost of retail delivery from house to house by means of vehicles and drivers thereof and their helpers makes a difference in the sale price, as such cost must be paid either by the consumer or the

258 wholesale distributor, and this cost amounts to about Three Cents (3c) per bottle; that this class of wholesalers or dealers in dairy products requires the storekeepers to sell dairy products at the same price as is charged by the "Large dealers" to consumers at their homes; that the storekeeper secures his dairy products at a price which is made uniform by some sort of an agreement between the wholesale dealers and those affiliated with them, and this difference is the profit which the storekeeper or retail dealer makes on each sale; that this class of business is conducted on a sort of a "Credit" basis whereby the wholesale dealer or distributor holds his milk wagon driver responsible for any losses due to non-collec-

tion of accounts for milk sold, and such uncollected amounts are deducted from the wages or compensation paid by this class of wholesale dealer or distributor to employees who are mostly members of the union made a defendant in this case, through its representation by said Steve Sumner and his associated defendants in a representative capacity; that as stated in a preceding paragraph of this complaint, a large number of people in Chicago and its vicinity prefer to save the cost of the house to house delivery and desire to purchase their dairy supplies at retail from the "Independents" or cash and carry stores and by paying cash therefor, and carrying their own purchases to their respective home, such buyers secure such dairy products at a reduced price, and this sort of competition has brought about a business dispute which has, in a measure, reacted upon the persons who are engaged in operating motor or delivery vehicles in the distribution of dairy products as described in this complaint.

260 20. That plaintiffs charge the fact to be that Steve Sumner, as a representative of Milk Wagon Drivers' Union, Local 753, with offices at 220 South Ashland Boulevard, Chicago, Illinois, has visited the place of business of plaintiffs and the business places of other persons engaged in conducting a wholesale dairy product business and pasteurization plant for the purpose of inducing employees of such establishments to join said Local Union 753 and thereby make such business place or establishment of the type denominated by said Union as a "Union labor plant." Plaintiffs state that they and the proprietors of other establishments of the same kind informed said Sumner that they had no objection to having their employees become members of labor unions and that their employees could join Local Union 753, if they desired to do so, but said Sumner and other business agents of said Local Union 753 refused to accept all the employees of plaintiffs and other independent distributors as members of said Union, because the plaintiffs and others similarly situated, were conducting their business differently from those wholesale dealers and distributors who had an agreement with Local Union 753 as to the method of conducting the business and making sales to vendors, independent stores and cash and carry stores and upon the refusal to accept employees of plaintiffs and others similarly situated as members of Local Union 753, the employees of plaintiffs and other independent wholesalers and pasteurizers did become

members of Local Union 718, in consequence whereof
261 the plaintiffs and others similarly situated and their
employees and the independent stores and cash and carry stores have become involved with Local Union 753, as to the manner in which the employers and storekeepers shall conduct their respective business establishments.

21. Plaintiffs charge that said Milk Wagon Drivers' Union, Local 753 and the officers and members thereof,
have recently undertaken to aid the wholesale distrib-
262 utors, who are associated with them, as stated in this
complaint, to destroy competitors of such combination and to put out of business the independents and cash and carry storekeepers by declaring a strike against the independent distributors, although none of the members of Milk Wagon Drivers' Union, Local 753 were in the employ of independents engaged in the pasteurization of milk and in conducting the dairy business on a wholesale basis, nor of the cash and carry dairy products, retail establishment or of many hundreds of grocery storekeepers and other storekeepers who deal in dairy products at retail and said strike was called solely for the purpose of compelling the parties in interest, as herein described, to accede to the method of business followed by the wholesale dairy producers and distributors named in this complaint and for the purpose of destroying the employees' membership of plaintiffs and those similarly situated and against such unlawful device, scheme, agreement or conspiracy, plaintiffs have no adequate remedy at law.

22. Plaintiffs charge that said Local Union 753,
263 its members and officers, in order to make their strike
effective, have proceeded to picket customers of the independent dairy products distributors and have assaulted various persons engaged in distributing dairy products, who are not members of said Local Union 753, and have threatened storekeepers if they continue to patronize any establishments, which do not employ members of Local Union 753, and have thereby brought about a condition in the conduct of the dairy business, which is not a wage dispute and does not involve any betterment of the condition of employees or laborers and such conduct is unlawful and should be restrained by an injunction of this Honorable Court.

24. Plaintiffs further charge that the City of Chicago has not a sufficient Police Force to be able to properly protect the independent dairy product producers and their employees and the independent cash and carry store own-

ers and grocery storekeepers, whereby persons may be protected and their property protected from damage; that the Sheriff of the County of Cook in the district out-
264 side of the City of Chicago is likewise unable to furnish sufficient protection for the persons engaged in conducting business in the manner described in this complaint, and it is therefore necessary to secure an injunction restraining the perpetrating of the wrongful acts herein complained of as perpetrated by members of Local Union 753 and their unknown adherents and associates.

25. Plaintiffs further allege that it is an unlawful act for the members and officers of Local Union 753, their agents and representatives and unknown associates and co-conspirators, to undertake to influence members of other labor unions and customers of the independent dairy product distributors and of the independent cash and carry stores and grocery storekeepers, who deal in dairy products, from patronizing the persons with whom they have heretofore done business as purchasers of dairy products, to cease such patronage upon the pretense that as loyal union members and persons desiring a higher wage for service, that they should support Local Union 753 in its claim that there is a labor dispute in effect and against such acts, plaintiffs for themselves and their associates, pray relief by an injunction of this Honorable Court.

26. That the Supreme Court of the State of Illinois has recently rendered an opinion in the case of the People of the State of Illinois *vs.* Thomas Fitzpatrick, Edward Oenning and Joseph Kennedy, being a Writ of Error proceeding to the Criminal Court of Cook County, wherein said defendants were charged with arson and other crimes and the verdict of guilty was affirmed; that from the record of such cause, or an abstract thereof, which will be produced upon the hearing of this Court, it will fully appear that a cash and carry store located at 3300½ Southport Avenue, in the City of Chicago, was bombed and partially destroyed by said defendants; that all of said defendants were employees of the Bowman Dairy Com-
pany, one of the persons whose name appears in the
265 schedule attached to this complaint; that the Meadowmoor Dairy Company is an independent dairy product distributor and supplied dairy products to the milk store at 3300½ Southport Avenue, in said City;

That plaintiff, Josef Wagner, Sr., greatly fears that he and his family and employees, at and about the place of

business, and his employees at their respective homes and at places where they are engaged in performing their duties in carrying on the business of this plaintiff, and particularly at the cash and carry stores and independent storekeepers dealing in milk and dairy products, will be assaulted and subjected to grave personal injuries and that the trucks and property of such plaintiff will be damaged or destroyed by members of Local Union 753, their associates, confederates and supporters and he verily believes that they will carry such threats into effect unless restrained from doing so, by a Writ of Injunction of this Honorable Court, aptly worded, to prevent the commission of such wrongs.

267 The Foregoing Premises Considered, plaintiffs demand judgment and decree of this Honorable Court against the persons named as defendants, or either of them, in the foregoing complaint, as follows:

(1) That a Writ of Summons issue herein, as provided by law;

(2) That a temporary Writ of Injunction issue herein, aptly worded and directed as to the Court shall seem fit and proper after a hearing of the issued joined, to be in full force and effect until a final hearing may be had

268 herein, and a final decree entered and that such temporary Writ of Injunction issue without bond for the good cause shown in the complaint;

(3) That the issues of law and fact be adjudged in favor of plaintiffs and that a final decree be entered, granting to the plaintiffs, and each of them, the relief sought herein;

(4) That an Interlocutory Decree may be entered herein, providing for the appointment of a Receiver of the property and business of the Milk Wagon Drivers' Union Local 753, to be held by such Receiver and operated under the direction of this Court, if necessary, until a finel decree may be entered in this cause;

(5) That all proper writs may issue herein and that plaintiffs may have all such other, further and different relief in the premises as to the Court may seem fit and proper, according to the principles of equity practice.

.....

Lakeview Dairy Company, a corporation,
By: .....

.....

Attorneys for Plaintiffs.

274 And on, to wit, the 18th day of August, 1938, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Exhibit No. 10, in words and figures following, to wit:

275 DEFENDANTS' EXHIBIT NO. 10.

State of Illinois } ss.
County of Cook }

IN THE DISTRICT COURT OF THE UNITED STATES.

For the Northern District of Illinois,

Eastern Division.

Meadowmoor Dairies, Incorporated, a corporation,

vs.

Milk Wagon Drivers' Union of Chicago, Local 753, a voluntary unincorporated association, Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Albert C. Richards, Joseph L. Patterson, Louis Misch, Harry Saltzman, and David Riskind.

In Equity No. 14068.

DECREE.

This cause came on to be heard at this term on the motion of the solicitor for the defendants to dismiss this cause in accordance with the findings of fact and conclusions of law entered herein on this day, and was argued by counsel, and thereupon, upon consideration thereof, it was

Ordered, Adjudged and Decreed, as follows: viz:

First: That the amended Bill of Complaint herein be and the same is hereby dismissed on the merits because of want of equity.

Second: That the said amended Bill of Complaint herein be and the same is hereby dismissed for want of jurisdiction, with prejudice against another action upon the same grounds.

276 Third: That the above and foregoing cause be and hereby is dismissed on the merits because it does

not present such a substantial federal question as to vest this court with jurisdiction in the premises.

Fourth: That the defendants jointly have and recover from the complainant the sum of Twenty Two Hundred Eighty Four and 50/100—Dollars, being the costs and charges laid out and expended herein by the said defendants jointly, in addition to their respective costs to be taxed by the Clerk of this court, and that Execution issue therefor. All costs of this proceedings be taxed against complainants.

(To which ruling and Decree as above set forth and each of them, the complainant excepts, and exceptions are allowed.)

Enter: nunc pro tunc, as of February 18, 1935.

Barnes,
District Judge.

Dated at Chicago, Illinois, March 5, A. D. 1935.

Filed Aug. 6, 1938.

89 And on, to wit, the 6th day of August, 1938, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Motion to Strike, in words and figures following, to wit:

90 DISTRICT COURT OF THE UNITED STATES OF AMERICA.

* * (Caption—16073) * *

PLAINTIFF'S MOTION TO STRIKE.

To the Honorable Charles A. McDonald, Master in Chancery of the District Court of the United States:

Now come the Plaintiffs, Lake Valley Farm Products, Inc., a corporation; Amalgamated Dairy Workers Local, Industrial Union No. 819, a voluntary unincorporated Association; Josef Wagner, doing business as Wagner Dairy Products; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin, by Arthur R. Seelig, their attorney, and move that the testimony and evidence referred to hereinafter be stricken from the transcript of evidence of the hearings heretofore had before the said Master in Chancery herein, the said portions of said transcript being as follows:

91 1. Beginning at line 5, page 118 and ending at page 119, line 5, all reference to Meadowmoor Dairy Case for the reason that the said reference refer to a different

proceeding, are of a scandalous nature, irrelevant and immaterial and do not tend to prove or disprove any of the issues of the case.

2. The following statement of Mr. Riskind appearing at Page 150: "We always have that difficulty, with these men. They never remember the name." That said statement is scandalous and prejudicial and incompetent.

3. The statement of Mr. Riskind appearing at the fourth line from the bottom at page 314 and ending on the seventh line of page 315, for the reason that the same is prejudicial, conjectural and incompetent.

4. The statement of Mr. Riskind commencing on the sixth and ending on the thirteenth line of page 320, referring to ownership of the Wagner Dairy, for the reason that said statement is improper and incompetent. The statement of Mr. Riskind appearing at line 3, to line 6, of page 338, concerning the testimony of witnesses for the reason that said statement is prejudicial, scandalous and improper.

5. The statement of Mr. Riskind, at page 347 being: "I can not contro' myself on this. That is a deliberate falsehood." For the reason that the same is scandalous, prejudicial, improper and incompetent.

6. Lines 5, to 17 inclusive of page 363, of the transcript, starting with the words: "And would you be willing to abide by, etc.," for the reason that the question is based upon conjecture, is improper, irrelevant and immaterial and does not tend to prove or disprove any of the issues of the case.

7. Line 5, page 366 to line 3, inclusive on page 367, for the reason that the same is based on conjecture is irrelevant and immaterial and does not tend to prove or disprove any of the issues of the case.

92 8. Commencing with Line 13, page 378, and ending with Line 14, page 380, for the reason that the same purports to involve a proceeding other than the present proceeding and is irrelevant, incompetent and immaterial and does not tend to prove or disprove any of the issues of the present case.

9. Lines 2 to 11, inclusive of page 398, commencing with the words "Isn't it a fact you had a conversation * * *, etc", for the reason that said conversation was privileged, as between attorney and client, is irrelevant and immaterial and does not tend to prove or disprove any of the issues of the present case.

10. The entire pages 424 and 425 relating to discussions between Wagner Dairy Products and its counsel and concerning the signing of the Bill of Complaint, for the rea-

son that the subject matter thereof is privileged as between attorney and client and is immaterial and does not touch upon the issues involved in this case.

10½. All of the testimony from Line 18, page 442, to and including the last line of Page 445, for the reason that the same purports to be concerning an alleged dispute between the Wagner Brothers, and for the reason that the same is scandalous, immaterial and impertinent and does not prove or disprove any of the issues of the present case.

11. The statement of Mr. Riskind at Page 457, which is as follows: "I want to show your Honor that this Union Organization has been carried on under the supervision and recommendations of certain officials", for the reason that said statement is scandalous and impertinent and is not supported by any competent evidence and does not prove or disprove any issue of the case.

12. The statement of Mr. Riskind at Page 463, is as follows: "I object to that. I do not think she was present at our settlement. All this testimony was given in the Meadowmoor Dairy case", for the reason that said statement is scandalous and impertinent.

13. Commencing with the words of Mr. Riskind, on
93 Line 21, of Page 467 as follows: "If the wages of our men * * *", and ending with the Answer on Line 4, of Page 469, being "no", for the reason that the questions are based upon conjecture and wholly speculative, are immaterial and do not tend to prove or disprove any of the issues in the case.

14. Commencing with the words on Line 7, of Page 492, as follows: "The fact that this cut rate milk * * *" and ending with the words "Yes I certainly would" on Line 20, of said Page, for the reason that said question is based upon conjecture and wholly speculative and improper, is irrelevant and immaterial and does not tend to prove or disprove any of the issues in the case.

15. Commencing with the question on line 16, of Page 524, as follows: "Were you present when a contract was signed between Local 819 and the Wagner Dairy Company?" and ending with the words "I doubt it" on the last line of Page 532, for the reason that the Master erred in permitting the witness to be called as the Court's witnesses, as no sufficient basis therefor existed, and that the entire line of questions was irrelevant and immaterial and does not tend to prove or disprove any of the issues of the case.

16. That the entire testimony of the defense witness Robert A. Lamson, appearing at Pages 564 to 586 both

inclusive, for the reason that the same is immaterial and irrelevant and does not tend to disprove or prove any of the issues of the case.

17. The statement of Mr. Riskind appearing at the bottom of Page 568 and the top of 569 as follows: "That has been followed in all the cases and in our Answer, I state that the Meadowmoor Dairy * * *", for the reason that the said statement is scandalous, impertinent and improper.

18. The statement of Mr. Riskind commencing on
94 the 4th line from the bottom of Page 569 as follows: "That after it is pasteurized and put through its processes, then the pasteurized cream and pasteurized milk is an entirely new manufactured article and thereafter with the sale of the manufactured article is confined solely to the State of Illinois, and the City of Chicago, it is intrastate; it then becomes intrastate and loses its interstate individuality". That said statement of counsel is irrelevant, incompetent and improper; that no evidence to that effect was introduced by the defendants.

19. The Statement of Mr. Riskind appearing on Page 574, Line 10, and ending on Line 18 thereof commencing with the words: "Yes, we intend to show it, * * *" for the reason that said statement is irrelevant, incompetent and not supported by any testimony.

20. All the testimony appearing on Pages 576 and 577, concerning "bacteria count" for the reason that the same is irrelevant and immaterial and does not tend to prove or disprove any of the issues of the case.

21. Commencing with Line 9, page 581, with the words: "Assuming milk is brought in from * * *" to and including the word "yes" on Line 13, of Page 582, for the reason that the bacterial content of milk is not any issue in this case, and that the same is irrelevant and immaterial.

22. From Line 14, Page 582, to and including Line 9, Page 586, concerning the "sterilization" of containers, for the reason that the same is not in issue, and is immaterial and irrelevant.

23. Lines 10 to 15, of Page 586, concerning the bacteria requirements of cream for the reason that the same is not in issue and that the same is irrelevant and immaterial.

24. The entire additional cross-examination of
95 Frank Wagner, appearing on Pages 592 and 593, for the reason that the same purports to concern the title to the Richmond, Illinois, milk plant, which is not in issue in the case and which is irrelevant and immaterial.

25. The entire testimony of defense witness Gust Palmer, appearing at Pages 595 to 604 inclusive, for the reason that

the entire testimony of such witnesses concern dairies other than the Plaintiff Dairies and did not involve any of the parties to the present proceeding, did not tend to prove or disprove any of the issues of the present case and was irrelevant and immaterial.

26. Commencing at Line 8, Page 600 and ending with the termination of direct testimony on Page 604, for the reason that all of such evidence involved a dairy other than the Plaintiff Dairies and that the wages and terms and conditions of employment referred to were not of the plaintiff dairies and do not tend to prove or disprove any of the issues of the present case and are irrelevant and immaterial.

27. The entire testimony of the witness George Beilfuss, commencing at Page 608 and ending at Page 623, for the reason that the testimony is not in reference to any of the parties to the present case, but involve dairies, not parties to this proceeding, does not tend to prove or disprove any of the issues of the present case and is irrelevant and immaterial.

28. The entire Pages 610, 612, 613, 614, for the reason that the same purports to concern wages and terms and conditions of employment involving a dairy which is not a party to this suit and that the same is irrelevant and immaterial.

28. The statement of Mr. Riskind appearing on Page 618 as follows: "My theory of this case is that there is a conspiracy in this case between employer and employee to com-
bat No. 753. This man will bring it out, and how he
96 happened to be there", for the reason that such statement is scandalous and improper.

30. The entire testimony of the defense witness Morton Gerstein appearing at Pages 631 to 634 inclusive, for the reason that the wage scale of the defendant union is not in issue and that the testimony of the witness does not tend to prove or disprove any of the issues in the case, but is wholly irrelevant and immaterial.

31. The testimony of the witness Gerstein, as to wages appearing on Pages 631 and 632, for the reason that the same is immaterial and irrelevant.

32. The entire testimony of the defense witness Albert Harris appearing at Pages 638 to 643 both inclusive, for the reason that the same does not involve the Plaintiff Dairies, is wholly irrelevant and immaterial and does not tend to prove or disprove any of the issues of the case.

33. The testimony of the defense witness Harris appearing on Pages 638 and 639 concerning wages and conditions

of employment, for the reason that the same are not in issue, and are wholly irrelevant and immaterial.

34. The testimony of the witness Harris, commencing with Line 5, Page 642, and ending with Line 19, Page 642, for the reason that the same applied to a dairy not involved in the present suit and is immaterial, irrelevant and not binding upon the plaintiffs.

33. The testimony of the witness Harris, commencing with Line 20, Page 645, to the end of direct examination of the witness on Page 647, for the reason that the same refers to Union dues of a dairy not involved in the present proceeding and is irrelevant and immaterial.

36. The entire testimony of the witness Joseph Schlee, from Pages 648 to 653, both inclusive, for the reason that the same does not refer to any of the parties to the
97 present proceedings and is immaterial and irrelevant.

37. The entire testimony of the witness Steve Schostok, Pages 664 to 667 both inclusive, for the reason that the testimony does not apply to the Plaintiff dairies and that wages earned by another dairy is immaterial and irrelevant to the isues in the present case.

38. The testimony of the witness Steve Schostok, appearing at Page 665 concerning his present wages, for the reason that the same is immaterial and not in question in the present case.

39. The entire re-direct examination of the witness Steve Schostok, at Pages 674 and 675 for the reason that the same applies to a dairy other than the Plaintiffs and is not in issue in the present case.

40. The entire testimony of the witness James Cavico, Pages 677 to 680, both inclusive, for the reason that the same applies to earnings with a dairy other than the Plaintiff dairies concerned several years ago and is immaterial and irrelevant to the issues in the present case.

41. The entire testimony of the witness Walter Job, Pages 686 to 689, both inclusive, for the reason that the same refer to wages earned with dairies, other than the Plaintiff dairies and are immaterial and irrelevant to the issues in the present case.

42. The entire testimony of the witness Al Zeller, Pages 694 to 696, for the reason that the same refer to wages earned with dairies other than the Plaintiff dairies and are immaterial and irrelevant to the issues in the present case.

43. The entire testimony of the witness Harry Wald, appearing on Page 707, and including the first six lines of Page 708, for the reason that the salary, conditions of, or

instructions to pickets are immaterial and not an issue in the present case.

44. The testimony of the witness Wald, commencing
98 with the fourth line from the bottom of Page 715, and including the entire page of 716, and ending with the 11th line of Page 717, for the reason that such testimony refers generally to the manner of picketing and does not fix any date or place, is not binding upon the Plaintiffs and is irrelevant, incompetent and immaterial.

45. The testimony of the witness Wald commencing on Line 10, Page 718 and ending with the end of direct examination on Page 719 as to the reason for picketing, because the same is improper and immaterial as the witness's reason for picketing is in no way an issue in the present case.

46. The entire re-direct examination of the witness Wald pages 738 and 739 concerning the hours of labor, for the reason that the same are not in issue is irrelevant, incompetent and immaterial.

47. The entire Pages 744 and 745 of the testimony of the witness Bernard F. Richards, for the reason that the same purports to state the causes why employment was lost seven years ago with a dairy other than the Plaintiff dairy; that the same is irrelevant, immaterial and incompetent and not an issue in the present case.

48. The entire Pages 746 and 747 of the witness Richards, for the reason that the same refer to wages and conditions of employment of, and instructions to pickets, which are not in issue in the present case and are wholly irrelevant and immaterial.

49. The testimony of the witness Richards, commencing with the fifth line from the bottom of Page 751 to and including the end of direct examination on Page 755; that such testimony concerns the witnesses reason for picketing, etc., which is immaterial and not in issue of the present case.

50. The entire testimony of the witness Columbus Stelle, at Pages 744 to 779 inclusive, for the reason that the same applies to the salary, conditions of and instruction to pickets, etc., is not in issue and is immaterial, irrelevant and incompetent.

99 51. The entire testimony of the witness Charles Segale, Pages 788 to 799 inclusive, for the reason that the same applies to the wages, conditions of and instructions to pickets which are not in issue in the present case and is immaterial, irrelevant and incompetent.

52. The entire Pages 823 to 826 of the witness Ray Bryant concerning vendor distributors and helpers, etc.,

for the reason that the testimony did not fix any date, did not refer to the Plaintiff Dairies and that the matters contained in such evidence are not an issue of the present case, but are wholly irrelevant, immaterial and incompetent.

53. The testimony of Ray Bryant, commencing with the Last 8 lines of Page 826, to and including the 4th line from the bottom of Page 828, for the reason that the same refers to the wage scale and conditions of employment of members of the defendant union; that such evidence does not pertain to the plaintiff dairies who do not employ members of the Defendant Union; that the same is not an issue of the present case and is irrelevant, immaterial and incompetent.

54. The testimony of the witness Bryant, commencing with the last three lines of Page 829, and ending with the last line of Page 833, concerning income and conditions effecting vendors for the reason that the same do not apply to the Plaintiff Dairies, are not an issue of the present case, and are irrelevant and immaterial and not binding upon the Plaintiffs.

55. The entire page 834, of the testimony of the witness Bryant for the reason that the reference therein to wages paid by the Wagner Dairy is not in issue in the present case and the reference to the effect to the vendor system is incompetent and improper, based upon conjecture, and not material to the issues of the case.

56. The last eight lines of Page 835, to and including the entire Page 836, of the witness Bryant, concerning conversations at union meeting, for the reason that the same
100 were not in the presence of the Plaintiffs and are hence inadmissable; that the same are self-serving and are immaterial and irrelevant and incompetent.

57. The last ten lines, Page 838, as to the reason for commencing picketing, the last seven lines of Page 839, and the first line of Page 840, as to the course of such picketing, for the reason that the same does not refer to the present case and is immaterial and irrelevant.

58. The last ten lines, of Page 840, all of Page 841, and 842, and including the first sixteen lines of Page 843, for the reason that the same refer to the Meadowmoor Dairy which is not a party to this proceeding and which is immaterial and irrelevant.

59. Commencing with the last ten lines of Page 843, all of Pages 844, 845 and 846, and ending with the third line on Page 847, for the reason that the same refer to the conditions of vendors in a Department of Agriculture hear-

ing held in 1933 and do not touch upon the issues of the present case, but are irrelevant and immaterial.

60. The testimony of the witness Bryant commencing with the fourth line of Page 847, to and including the fourth line of Page 848 concerning helpers on milk trucks, for the reason that the same is immaterial and irrelevant.

61. The testimony of the witness Bryant commencing with the fifth line, Page 848, and ending with the fifth line page 850, concerning relief by the defendant union, for the reason that the same is not an issue of the present case, but is irrelevant and immaterial.

62. The testimony of the witness Bryant, commencing with the 12th line on Page 851, and ending with the fifth line from the bottom of Page 853, concerning the relationship of defendant Union wage scale to retail prices, for the reason that the same is immaterial and irrelevant.

63. The testimony of the witness Bryant appearing
101 on Pages 857 to and including the sixth line from the bottom of Page 861, for the reason that the same refers to a conference purportedly had concerning the Meadowmoor Dairy Company, which dairy is not a party to the present case; that such evidence is immaterial and irrelevant.

64. The entire testimony of the witness Bryant appearing on Pages 863, 864 and ending with Line 14 of Page 865, concerning instructions to pickets, etc., for the reason that the same were not binding upon the Plaintiffs and are incompetent and immaterial.

65. The testimony of the witness Bryant commencing with the last line Page 925, and ending with the sixth line of Page 929 concerning the form of union contract, for the reason that the same is immaterial and improper and the experience of the defendant is in no way binding upon the Plaintiffs.

66. That the entire offer of proof of defendant counsel commencing with the last two lines of Page 932, and ending on the fourth line from the bottom of Page 933, except in so far as it was stipulated by plaintiffs' counsel that Mr. O'Connor would testify that he did not make the threats referred to, for the reason that none of the other facts were stipulated to in the record.

67. All of Pages 936 to 942 inclusive of the witness Steve Sumner concerning the history of the Defendant Union, for the reason that the same is immaterial and irrelevant.

68. All of the testimony of the witness Steve Sumner, commencing with the fourth line from the bottom of Page 944, and ending with the fifth line from the Bottom of Page

951, concerning the history of the Meadowmoor Dairy, for the reason that such Dairy is not a party to the present case and that the same is irrelevant and immaterial.

68½. The testimony of the witness Sumner commencing with the thirteenth line of Page 952, and ending with the thirteenth line of Page 954, concerning the vendor system, for the reason that the same is immaterial and irrelevant.

102 69. The testimony of the witness Sumner from Line 8, of Page 967, to the bottom of said Page, as to opposition to the system of distribution for the reason that the same is immaterial and irrelevant.

70. The testimony of the witness Sumner, commencing on the 17th line of Page 968, and ending with the fifth line of Page 969, concerning relief payments, for the reason that the same is immaterial and irrelevant and not an issue in the present case.

71. The testimony of the witness Sumner, commencing with Line 6, and ending with Line 14, of Page 970, concerning the relationship of the price of milk and wage scale for the reason that the same is immaterial and irrelevant and not an issue of the present case.

72. The testimony of the witness Bryant, commencing with the 3rd line of Page 984, and ending with the termination of re-direct examination on Page 985 concerning the printed circular, for the reason that the circumstances and the purpose of the circular are immaterial, inasmuch as the circular speaks for itself and such evidence is immaterial and irrelevant.

73. The testimony of the witness Sumner, on Page 996, concerning benefits to members, for the reason that the same is not an issue and is immaterial and irrelevant.

74. The volunteered statement of the witness Sumner on Lines 8 to 12, Page 997, for the reason that the witness was asked no question.

75. The testimony of the witness Korda, commencing with the 12th line of Page 1021 and ending with the 9th line of Page 1026, concerning wages, etc., for the reason that the same are not an issue and are immaterial and irrelevant.

76. The testimony of the witness Korda, on Lines 18 to 23, Page 1034 concerning Income for the same reason as the foregoing.

76½. The questions of defense counsel and answers 103 of witness Wagner commencing with Line 16, Page 1059, and ending with Line 14, Page 1060, for the reason that the same are irrelevant and immaterial and not

involved in the issues of the case and were asked for scandalous and prejudicial purposes.

77. The testimony of the witness Wagner on cross-examination commencing with Line 3, Page 1101 and ending with the fourth line from the bottom of Page 1103, concerning certain store owners purchasing milk from the Wagner Dairy, for the reason that the same is not involved in the present suit and is immaterial and irrelevant.

78. The cross-examination of the witness Weiss, on Lines 9 to 15, Page 1171, as to employees of the Lake View Dairy, for the reason that the said Dairy is not a party to the present suit, and that the same is irrelevant and immaterial.

79. The volunteered statement of the witness Sumner, commencing with the seventh line from the bottom of Page 1220, and ending on the 1st line of Page 1221, for the reason that no question was asked of the witness.

80. The volunteered statement of the witness Sumner commencing with Line 3, and ending with Line 10, of Page 1222, for the reason that no question was asked the witness.

81. The statement of defense counsel on lines 10 to 12, of Page 1227 concerning the organization of the Plaintiff Union as being improper and prejudicial.

82. That defendants' Exhibit 8, admitted in the record at Page 1239, be stricken from the record as not referring to the present case and as irrelevant, immaterial and incompetent.

83. That defendants' Exhibit 9, admitted in evidence at Page 1240, be stricken from the record for the same reason.

84. Defendants' Exhibit 10, admitted in evidence at Page 1242, be stricken from the record, for the same reason.

85. Commencing with the sixth line from the bottom of Page 201, to and including the bottom of Page 217, for
104 the reason that the said Pages contain no questions or answers of witnesses, but contain only the prejudicial and improper statements, of counsel, which cannot properly be part of the record.

Arthur R. Seelig,
Attorney for Plaintiffs.

105 And on, to wit, the 6th day of August, 1938, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Motion to Strike, in words and figures following, to wit:

106 DISTRICT COURT OF THE UNITED STATES OF AMERICA. Filed Aug. 6, 1938.

* * (Caption—16073) * *

MOTION TO STRIKE.

Now come the defendants, Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson, by David A. Riskind their duly authorized attorney, and move the court to strike from the record herein the tetstimony of the following witnesses, as set out in this motion, for the reasons that said testimony is incompetent, irrelevant and immaterial and is hearsay and is not based upon the action of any person who could bind the defendants herein:

The testimony of Harry Entin appearing on pages 9 and 10 of the transcript which is as follows:

A: The violence? My windows were broken three times on different occasions. It happened four years ago—then about four months later and then two years ago last July."

The statement that these windows were broken without any definite statement as to who did it is something that encumbers the record and prejudices anybody that would read it.

The testimony of Joseph Bazik appearing at pages 39 and 40 of the transcript which is as follows:

107 "Sunday night my windows were smashed.

Mr. Seelig: Of this year?

A: Of this year, yes.

Q: What occurred at that time?

A: Well—my windows were broken again."

Again there is no testimony as to who caused this breakage of windows.

The testimony of Carla Fischer appearing at page 43 of the transcript which is as follows:

Mr. Seelig: What, if anything, happened at that time?

A: Well, we had our windows broken in one night."

The statement that these windows were broken without any definite kowledge as to who did it is something that encumbers the record and prejudices anybody that would read it.

The testimony of Joseph Spry appearing on page 49 which is as follows:

"Two men came in and said, "You wouldn't like to have your windows broken, would you?"

Again there is no testimony as to who these men were that

threatened him and there is no testimony that his windows were broken.

The testimony of Siegfried Weiss appearing on pages 110-111-112-113-114-115-116-118-119-120-121-122 and page 130 of the transcript which is as follows:

"Q: State what you observed?

A: They had their windows broken.

Mr. Riskind: Objection.

The Witness: There were stores burned up. It was bombed. There were stink bombs thrown in them. They were forced out of business by having the stores picketed and picketing not in a lawful manner. They stopped all deliveries. They stopped customers from coming in. It is five years. We observed these things. It is a continuous trouble for all these milk stores and our dairy.

Mr. Seelig: What has been the experience of your dairy within the last five years?

A: We were bombed in June, 1935 and September 1935. The Lake View Dairy, that is part of our dairy, was bombed in 1934. Our trucks were dumped in the river. They were burned in 1934. Our drivers were kidnapped, and taken out to Lincoln Park, trucks taken away from them.
108 I observed the Edgewater Dairy bombed in 1934. For the last five years I have seen dozens of Edgewater Stores with broken windows.

I observed a man with bruises.

The Blue Ribbon stores had broken windows.

The Meadowmoor Dairies' stores had broken windows. I observed the Wagner Dairy stores had broken windows. I saw turned over trucks. I observed the Cloverdale Dairy Stores with broken windows.

I observed broken windows at 3810 Lake Park Avenue. Also 2547 West 51st Street. This happened a few days ago."

Again there is no testimony as to who caused the violence or the breaking of these windows. Such evidence is clearly incompetent and is brought into the record clearly to prejudice this court.

The testimony of Jesse Wilson appearing on page 168 of the transcript which is as follows:

"My windows were all broken out and a stink bomb was thrown into the store."

Again there is no testimony as to who caused the breakage of windows. Such evidence is clearly incompetent and is only brought into the record to prejudice this court.

The testimony of John Igoe appearing on page 272 of the transcript which is as follows:

"I saw broken windows and I saw pickets in front of one of the stores where the windows were broken about eight days ago."

Again there is no testimony as to who caused the breakage of the windows. Such evidence is clearly incompetent and is only brought into the record to prejudice this court.

The testimony of Frank Wagner appearing on pages 331-332-333-334-335-336 of the transcript which is as follows:

"I have observed broken windows, stink bombs thrown into stores ruining all the food in the stores and the storekeepers were unable to sell them.

I have observed that they have had broken windows, where they have had insurance, and where they cancelled out the insurance and the storekeeper was unable to 109 to get plate glass insurance for the windows.

Windows were broken and they threw stink bombs into the place and also go into the place and want to fight with the storekeeper. This has taken place since 1931.

In 1932 I observed that the equipment of the Edgewater Dairy was broken up with a sledge hammer, punctured pasteurizers. I have also observed that the Belmont Dairy machinery was broken, pasteurizers punctured, all the machinery wrecked. I have observed it at the Uptown or Blue Ribbon Dairy.

I observed machinery broken, pasteurizers hammered up with a hammer, coolers broken.

The Wagner Dairy had their place bombed in 1931. In 1932 they threw another bomb in and wrecked the building. In 1933 they threw a great big bomb in and there was a lady injured that was working in the garden."

That these statements made by this witness as to terrorism, bombing and broken windows are admitted by him to have been done so by people unknown to him. When asked directly if he had ever seen any of these acts committed he said that he had not. In fact, the former owner of the Lake View Dairy, Gust Palmer, testified that he was threatened by another non-union dairy, the Blue Ribbon Dairy, and that he had the owners of this dairy arrested and charged with the bombing. This evidence is strictly hearsay and we most respectfully contend that even though conspiracy laws allow a great deal of circumstantial evidence to come in, there must be some limits and where the evidence is in no way connected with Local 753, such evidence should be stricken.

The testimony of Mimi Kuelmar appearing on pages 460 and 464 of the transcript which is as follows:

"My store—the windows got broke.

A fellow smashed the windows at 4640 Broadway."
The statement that these windows were broken without any definite statement as to who did it is something that encumbers the record and therefore should be stricken.

The testimony of Josephine Hall appearing on page
110 474 of the transcript which is as follows:

"The window had been broke for a long time and I had a piece of tin which I put in there and they broke it the second time and I had one broke the other day, but I don't know just how it was done."
We respectfully urge that this evidence be stricken from the record. This witness said that her windows were broken and that she did not know who did it. She did say that when the windows were broken the last time a man employed by the United States Government was arrested for breaking the windows. Certainly this is evidence that in no way is connected with the union. No identification is made. It is strictly hearsay and should be stricken.

The testimony of Mrs. Mable Bruce which appears on page 1001 of the transcript which is as follows:

"Two o'clock in the morning the windows were broken."
Again there is no identification or connection with the union. Such evidence is strictly hearsay and should be stricken.

The testimony of Chester Hall which appears on page 1061 of the transcript which is as follows:

"The windows were broken about a week after Mr. O'Connor paid us a visit in the middle of the night. Two bricks were thrown through the plate-glass window at night. I know that our windows were put in and they were broken again."
Again there is no identification or connection with the union. Such evidence is strictly hearsay and should be stricken. In fact, when Mr. Hall was asked the question as to whether or not he knew who broke the windows he stated that he did not know.

The testimony as to Frank Wagner on page 1095 of the transcript which is as follows:

"The stores have had windows broken, stink bombs were thrown into their places."
No identification as to who did this. Therefore this matter is strictly hearsay and should be stricken.

111 Defendants move to strike all of the cross-examination of Steve C. Sumner contained on pages 1192 to

1222, inclusive, on the ground that it is incompetent, irrelevant and because counsel for the plaintiffs has not produced any competent evidence in any manner to corroborate any of the insinuations that he has put in the record against Mr. Sumner.

David A. Riskind,
Attorney for Defendants.

142 And on, to wit, the 8th day of August, 1938, there was filed in the Clerk's office of said Court a certain Master's Report on Application for Injunction, in words and figures following, to wit: Filed Aug. 8, 1938.

143 In the District Court of the United States

For the Northern District of Illinois,

Eastern Division.

Lake Valley Farm Products, Inc., a Corporation, *et al.* *vs.* Milk Wagon Drivers' Union, Local 753, *et al.* } In Equity No. 16073.

MASTER'S REPORT ON APPLICATION FOR INJUNCTION.

To the Honorable Judges of the District Court of the United States, for the Northern District of Illinois, Eastern Division:

The undersigned, Charles A. McDonald, a Master in Chancery of the United States District Court, for the Northern District of Illinois, Eastern Division, to whom as such Master the application for a preliminary injunction was referred by Order of Court entered herein on May 23, 1938, respectfully reports as follows:

1. That on May 21, 1938, Lake Valley Farm Products, Inc., a Corporation, Amalgamated Dairy Workers' Local Industrial Union #819, a voluntary unincorporated association, Josef Wagner, doing business as Wagner Dairy Products, Lakeview Co-Operative of Watertown, Wisconsin, an Agriculture Co-Operative Corporation of the State of Wisconsin, as Plaintiffs, filed their Bill of Complaint herein against Milk Wagon Drivers Union
144 Local #753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a Voluntary Association, Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson, Defendants, in which it alleged:

That Plaintiff, Lake Valley Farm Products, Inc., is an Illinois Corporation, having its principal place of business in Chicago, Illinois; that Amalgamated Dairy Workers Local Industrial Union #819 maintains its executive offices in the City of Chicago, County of Cook and State of Illinois; that Josef Wagner is a resident of the State of Illinois; that Lakeview Co-Operative is a Wisconsin Corporation, having its principal place of business in the town of Watertown, in the State of Wisconsin, and that all of said defendants are residents of the State of Illinois.

The Complaint further alleges that this is a suit of a civil nature in equity arising under the laws of the United States enacted to give protection to trade and commerce and against unlawful restraints and monopolies, commonly known as the "Sherman Anti-Trust Act", coupled with "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for Other Purposes" commonly known as the "Clayton Act". The complaint prays that the Court in granting complete
145 relief to the Plaintiffs adjudicate and determine the rights of the Plaintiffs under the Statutes of the State of Illinois entitled "An Act Approved June 28, 1919, Amending the Conspiracy Act of March 27, 1874" and to adjudicate and determine the rights of the Plaintiffs under Section 19 of the United States Criminal Code. The Complaint further states in Paragraph #14 thereof that the jurisdiction of the Court is invoked by virtue of the diverse citizenship of the parties Plaintiff and Defendant.

2. The facts as set forth in the Bill of Complaint, briefly stated, are as follows:

That the Plaintiff, Lake Valley Farm Products, Inc., is engaged in the business of processing and distributing milk and dairy products in the City of Chicago; that its pasteurizing plant is located at 5330 South Western Avenue, in said City; that said Corporation has a large investment in its dairy and its delivery equipment; that approximately ninety persons are employed in its Plant in connection with the processing of its milk and dairy products and in the distribution of said products; that said Plaintiff has at all times enjoyed a satisfactory relationship with the purchasing public and has also established a reputation for the satisfactory quality of its products; that it has created and built up a good-will; that the ability to continue to serve said public is of great value and worth to said Plaintiff; that said property
146 and established business is of the value of approximately Two Hundred Thousand Dollars ($200,000.00).

3. That the Plaintiff, Josef Wagner, doing business as Wagner Dairy Products, is now and for more than twenty years prior to the filing of the aforementioned Bill of Complaint has been engaged in the business of processing and distributing milk and dairy products in the City of Chicago and its environs; that said Josef Wagner has a large investment in dairy and delivery equipment; that there are approximately twenty-four persons employed in his Plant in connection with the processing and handling of milk and dairy products and in the distribution of said products; that the property and the good-will of the established business of said Plaintiff is of the value of approximately Fifty Thousand Dollars ($50,000.00).

4. That the Plaintiff, Amalgamated Dairy Workers Local Industrial Union #819, is an unincorporated association, at common law, of natural persons chartered by its parent union the Committee for Industrial Organization, for the purpose of organization and collective representation of workers engaged in the dairy industry; that in the furtherance of its aforesaid purposes said Plaintiff Union organized divers dairy workers in the
147 City of Chicago, among whom are the workers employed by and in the processing, handling and distributing the products of said Plaintiffs, Lake Valley Farm Products, Inc., and Wagner Dairy Products.

5. The Complaint further alleges that said Plaintiff, Lake Valley Products, Inc., receives its daily requirements of fluid milk of and from said Plaintiff, Lakeview Co-

Operative of Watertown, Wisconsin, which corporation maintains a country receiving Plant or Station at the town of Watertown in the State of Wisconsin; that the said Plant receives said fluid milk from farmer producers whose farms are located adjacent to said country plant, all of which farms are situated in and said farmer producers are residents and citizens of the State of Wisconsin; that said farmer producers deliver milk to the country plant where said milk is collected and thereafter, on the same day, is placed in and transported by motor trucks over the public highways from the State of Wisconsin into the State of Illinois and to the dairy plant of the Plaintiff, Lake Valley Farm Products, Inc., in the City of Chicago.

6. That the Plaintiff, Josef Wagner, doing business as aforesaid as the Wagner Products, receives his fluid milk supply from the Richmond Milk Plant maintained and operated in the town of Richmond, County
148 of Cook and State of Illinois; (This, no doubt, is an error as this town of Richmond is located in Lake County) that said Dairy Plant is situated a few miles from the boundary line of the State of Wisconsin; that said Richmond Milk Plant receives fluid milk from farmer producers, many of whom are situated in the State of Wisconsin and who bring said milk from the State of Wisconsin, the point of production, to said Richmond Milk Plant; that said milk so received is collected and thereafter on the same day is transported by motor truck upon the public highways in the stream of interstate commerce to the dairy plant of said Plaintiff, Josef Wagner, in the town of Cicero and State of Illinois.

7. The Bill further alleges that milk and cream produced outside of the State of Illinois and sold in the City of Chicago in the course of the conduct of the business of the Plaintiff Dairies, and the transportation of said fluid milk to said Dairies, constitutes a large and important continuous course of business conducted in the stream of interstate commerce among the several states of the United States of America, as the term is defined and employed by the laws of the United States, which laws are referred to in said Bill of Complaint; that the fluid milk received daily by the Plaintiff Dairies as described in said Bill of Complaint is immediately thereafter pasteurized and bottled; that the pasteurizing
149 and bottling requires a very short period of time; that the milk so received and pasteurized is distributed on the same day it is received and within a few hours

thereof; that the Plaintiff Dairies distribute a portion of said bottled milk and cream to numerous business establishments situated in the City of Chicago, such as milk stores, grocery stores, delicatessens, food stores and other retail establishments where said milk and cream is sold at retail to the ultimate consumer thereof; that said bottled milk is distributed to said stores by motor trucks, which are the property of the Plaintiff Dairies and are operated by drivers employed by said Plaintiff Dairies who are members of the Plaintiff Union; that a portion of said bottled milk and cream is sold to various persons who own and operate automobile truck equipment, who pick up said bottled milk and cream at the pasteurizing Plant of said Dairies and thereafter distribute it to various milk and food stores, and that said persons so operating said delivery truck equipment are of a class commonly known and referred to as "Vendors."

8. That in the distribution of milk in the City of Chicago, two methods are employed, one by delivery direct to the home of the ultimate consnmer and the other by the so called cash and carry method. That because of the high cost of delivering said milk and cream direct to the home the practice has grown and is now prevalent in the City of Chicago of selling bottled milk and cream in the alleged cut-rate stores at prices lower than the prices charged for the milk and cream delivered direct to the home as aforesaid.

9. The complaint further alleges that the Dairies located in the City of Chicago which employ members of the defendant union, distribute the greater part of all milk that is distributed in the City of Chicago and monopolize such distribution in Chicago, thereby directly affecting interstate commerce; that the defendant union by virtue of an unlawful conspiracy, confederacy, combination and agreement with said Dairies has sought to maintain an artificial price of milk in the City of Chicago and has sought to prevent the Plaintiff Dairies and other independent cut-rate dairies from distributing milk at reasonable prices.

10. That said defendants, conspired among themselves and with divers other persons, in an attempt to regulate and control the retail price of milk in the City of Chicago; that the independent stores selling cut-rate milk, for the several years last past, have been bombed, destroyed by fire, their plate glass windows have been smashed, stench bombs have been thrown, their customers intimidated and threatened, owners and clerk employed therein

were threatened and assaulted, ingress by customers
151 prevented, delivery therein of food stuffs and other necessary commodities were prevented, patrons of said stores were insulted, threatened and otherwise abused, and other unlawful and criminal acts have been committed, all of which acts, as alleged in the Bill of Complaint, were caused by or charged to the defendants.

11. That in addition to said alleged criminal acts the defendant union in order to carry out and give effect to said alleged unlawful conspiracy, confederacy, combination and agreement, has caused its members to patrol back and forth in front of said independent milk stores, carrying banners having the following legion inscribed thereon: "This Store Is Unfair to Milk Wagon Drivers Union Local #753 I. B. T. Affiliated with the A. F. of L." That said picketing of said stores by the defendant union is not peaceful picketing pursuant to a legitimate labor dispute; that said stores are not involved in any labor dispute; that said picketing is and constitutes a secondary boycott in unlawful restraint of trade as defined by the laws of the United States; that said picketing has been accompanied by threats of force, intimidation and violence; that the end sought to be achieved thereby is to create a monopoly in restraint of interstate trade and commerce, and is illegal.

12. Said Bill of Complaint describes in detail various acts of violence alleged to have been committed by the
152 defendants in pursuance of said alleged conspiracy.

13. The Complaint further alleges that by reason of said unlawful acts the Plaintiff Dairies have lost the patronage of a large number of stores that as a result of said unlawful conspiracy and conduct of said defendant the interstate trade and commerce of the Plaintiffs and of trade and commerce generally in milk and cream coming into the State of Illinois has been greatly demolished, decreased and restrained; that if said conspiracy, combination and confederacy is permitted to continue without the intervention of the Court it will be impossible for the Plaintiff Dairies and the Plaintiff Co-operative to continue in the exercise of their respective business in the flow and stream of interstate commerce, as in said Bill of Complaint described, and that said business will be ruined and destroyed.

4. The Complaint seeks the issuance of a temporary injunction restraining and enjoining the defendants from in any manner whatsoever unlawfully interfering with, hindering or obstructing said Plaintiffs in the free, uninter-

rupted control and direction of their respective affairs, from picketing said stores described in said Bill of Complaint and from unlawfully interfering with hindering or obstructing the Plaintiff Dairies from the distribution of their respective products; that said temporary injunc-
153 tion may after a hearing be made permanent and that said injunction be issued without bond.

15. The defendants herein filed a joint answer to said Bill of Complaint, which answer admits certain of the allegations of said Bill, but denies that the suit is of a civil nature in equity, which arises under the laws of the United States as set forth in said Bill of Complaint; denies such a diversity of citizenship as is required to give the Court jurisdiction; denies that the vendors described in Paragraph 29 of the Complaint are not eligible for membership in the defendant union, but states as a fact that any vendor of milk is eligible to membership provided he agrees to comply with the constitution and by-laws of said union.

16. Said answer further denies that there is an uninterrupted stream and flow of milk in interstate commerce by reason of the fact that raw milk is transported from other states into the State of Illinois, but alleges as a fact that when the raw milk transported from an other State is delivered to its destination at the various dairy plants located in the City of Chicago, the said raw milk is taken from its original containers and put into tanks which are located within said dairy plants and that it is thereafter processed and manufactured into salable articles such as milk, cream, butter, cheese and other dairy products;
154 that by so doing the newly manufactured articles become purely intrastate articles in character.

17. Said answer further denies that the picketing of the stores by the defendant union is not peaceful picketing and states as a fact that said picketing is at all times peaceful and is restored to for the purpose of advertising a legitimate labor dispute.

18. Said answer further denies any unlawful conspiracy, confederacy, combination or agreement to commit the alleged acts of violence charged in the Bill of Complaint. As to certain other allegations contained in the Bill of Complaint the answer neither admits nor denies them, but calls for strict proof thereof.

19. As a further defense to said Bill of Complaint said answer contains numerous allegations explaining the purpose of the defendant union, the working conditions of the employees, prior to the organization thereof, and the bene-

fits derived therefrom for its members since its organization in the year 1902.

20. Said answer further sets forth the scale of wages paid to truck drivers and helpers engaged in the delivery of so-called cut-rate milk.

21. Said answer further states that said defendant union, in an effort to unionize the entire milk industry
155 in the City of Chicago, including said Plaintiff Dairies, did cause the picketing of various cut-rate milk stores; that the unfairness of said respective stores consisted in the acceptance, delivery and purchase of milk from members of the craft who were not unionized.

22. The answer further alleges that a labor dispute existed and still exists between the Plaintiff Dairies, the Plaintiff Union and the Defendant Union and its members with respect to wages, terms and conditions of employment; that this cause involves a dispute between persons engaged in the same craft or industry, namely—the milk industry; that it also involves a dispute between persons having a direct or indirect interest in the same industry, namely,—the milk industry, that it involves conflicting interests in a labor dispute among persons participating therein and that the dispute involved in this cause is a controversy concerning terms and conditions of employment.

23. Said answer prays that this cause be dismissed for want of jurisdiction or in the alternative that said Bill of Complaint be dismissed for want of equity.

24. Hearings on the matters involved in these proceedings were had before the undersigned Master on sev-
156 eral dates beginning with May 25th and ending July 7th, 1938. A transcript offered and received at such hearings is contained in two volumes. Volume 1 consists of Pages 1 to 493 both inclusive, and Volume 2 consists of Pages 494 and 1239, both inclusive, both of which are filed herewith, made a part hereof and marked Exhibits "A" and "A-1" respectively. At the close of the evidence respective counsel spent several days in argument and thereafter filed exhaustive briefs herein, all of which have been given careful consideration by the Master.

25. During the course of the aforesaid hearings the Master prepared a statement of the pertinent issues involved herein and suggested that counsel confine the evidence and their argument to said issues. The statement of issues referred to is as follows:

Milk Purchased in the State of Wisconsin and Shipped Into the State of Illinois Flows in Interstate Commerce.

1—Does such milk continue to flow in interstate commerce

(a) after it is delivered to the purchasing Dairy in the State of Illinois?

(b) After such milk is mixed with domestic milk by such purchasing Dairy?

(c) After it is processed by such purchasing Dairy?

(d) After it is delivered to the purchasing cut-rate stores?

If not, at what point does such milk cease to flow interstate commerce?

2—Have the defendants entered into a conspiracy to injure the Plaintiff's business?

157 3—Have the defendants entered into an unlawful combination in restraint of trade in violation of the Sherman Anti-Trust Law?

4—Is there a labor dispute pending between the defendant union and either of the Plaintiffs, as contemplated by the Norris-LaGuardia Act?

5—Does the Bill allege facts showing diversity of citizenship?

26. In order to get as complete record as possible before the Court, the Master allowed the respective parties a wide latitude in the introduction of testimony. At the conclusion of the Master's hearings counsel for the respective parties presented a written motion to strike certain parts of the testimony. Under the strict rules of evidence some of the testimony received is no doubt inadmissible. In reaching his conclusions the Master has, however, given consideration only to the competent testimony and therefore the motions to strike testimony will be denied.

27. As above stated, one of the allegations of the Bill of Complaint seeks to show jurisdiction of this Court by reason of diversity of citizenship of the parties. A federal Court acquires jurisdiction in certain cases where the amount involved exceeds $3,000.00 and where the parties are residents of different states. There is no denial of the fact that the amount involved in this controversy exceeds the sum of $3,000.00. However, in determining the question of diversity of citizenship it is necessary that all of the

Plaintiffs reside in States different from the States in 158 which the defendants reside. The rule as stated in

Volume 25, Corpus Juris, Article 62, Page 749, as follows:

"In order that a controversy may be 'between citizens of different states' so as to give a Federal Court jurisdiction, it is necessary that all the parties on one side of the action shall be citizens of different states from all the parties on the other side."

In the case at bar three of the Plaintiffs are residents of the State of Illinois, and one is a resident of the State of Wisconsin. All of the defendants are residents of the State of Illinois. It is apparent, therefore, that the Federal Court does not have jurisdiction of this case by reason of diversity or citizenship, hence it will be necessary to look to other alleged grounds relied upon to establish jurisdiction in the Federal Court.

28. The Plaintiffs contend that the milk in question which is produced in Wisconsin and brought into the State of Illinois in interstate commerce continues to flow in interstate commerce after it is mixed with domestic milk, pasteurized, bottled, delivered to the cut-rate stores, and is in the course of delivery to the consumers. Said Plaintiffs also contend that any interference with the business of the retail dealer who sells said milk direct to the customers is such an interference with interstate commerce as will bring the case within the provisions of the Sherman Anti-Trust Law and the Clayton Act. Numerous authorities on this question have been cited by the respective parties, some of which are not in entire harmony. Certain of the apparent disagreements of said authorities can be accounted for by reason of the difference in facts. Many of the cases involving the question of taxation by different states lay down strict rules as to when interstate commerce ceases and the handling of the product becomes purely intrastate.

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29. There are also numerous cases pertaining to common carriers which follow a rule of law somewhat at variance with the rule contended for in labor cases of this character. One of the more recent decisions of the United States Supreme Court, analagous to the case at bar, is contained in the case of *Schecter Corporation* v. *The United States,* 295 U. S. 495 in which the N. R. A. Act was declared unconstitutional. Mr. Chief Justice Hughes in passing upon the question involved therein used the following language:

"The undisputed facts thus afford no warrant for the argument that the poultry handled by the defendants at

their slaughter house markets was in a 'current' or 'flow' of interstate commerce and was thus subject to congressional regulation. The mere fact that there may be a constant flow of commodities into a state does not mean that the flow continues after the property has arrived and has become co-mingled with the mass of property within the state and is there held solely for local disposition and used. So far as the poulty here in question is concerned, the flow in interstate had ceased. The poultry had come to a permanent rest within the state. It was not held, used or sold by defendants in relation to any further transactions in interstate commerce and was not destined for transportation to other states."

160 It will be noted that the poultry in question had come to a permanent rest within the state in question; that it was not held, used or sold in relation to any further transactions in interstate commerce and was not destined for transportation to other states. In that respect the case is similar to the case at bar and is an authority bearing directly on the question involved herein.

30. The leading case relied upon by Plaintiffs, entitled *"Baldwin* v. *Seelig"*, 294 U. S. 511, is not an authority supporting the proposition that milk distributed or being sold in the state of New York after being pasteurized, processed or bottled, is still flowing in interstate commerce. In that case the Court was passing upon a New York Statute which provided that no dealer within the State of New York might lawfully sell or distribute milk in said State unless the price paid therefor by said dealer or distributor to the producer, i. e., the farmer, was equal to the amount required by statute to be paid to New York producers of milk. In the case of *"Hannoford* v. *Silas Mason Company,"* 300 U. S. 577, the Court, in referring to the decision in *"Baldwin* v. *Seelig"*, said:

"New York was attempting to project its legislation within the borders of another State by regulating the price to be paid in that State for milk acquired there. She said in effect to farmers in Vermont: 'your milk cannot be sold by dealers to whom you ship in New York unless you sold it to them in Vermont, at a price determined here.' "

161 31. Plaintiffs contend that because of the picketing of the retail stores selling the cut-rate milk in question and because of the other alleged acts of violence committed, the Plaintiff Dairies have lost certain of said stores as customers; that such loss of customers has diminished the amount of milk the Plaintiff Dairies purchase from Wis-

consin or other states which constitutes an interference with the flow of milk in interstate commerce. This cause viewed in the light of the Courts reasoning in the above referred to cases, convinces the Master that the milk resting in the store of the cut-rate retailer had ceased to flow in interstate commerce; that, therefore, the acts complained of do not constitute such an interference with interstate commerce as would bring this case within the preview of the Sherman Anti-Trust Law or the Clayton Act.

32. The pertinent provisions of the Norris-LaGuardia Act, which is sometimes called the Anti-Injunction Act, are as follows:

Federal Code Annotated, Title 29:

Section 101: Injunction prohibited except as herein provided. No court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act (chapter); nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act (chapter). (Mar. 23, 1932, c. 90, Sec. 1, 47 Stat. 70.)

162 Section 104: Grounds for injunction limited. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts: * * *

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence."

Section 107: Hearing on sworn complaint; testimony; findings; notice; irreparable injury; period of restraint; undertaking.—No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will

be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, associations, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Section 113:

What constitutes labor dispute; participants; courts included. When used in this Act (chapter), and for the purposes of this Act (Chapter)—

163 (a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated or organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if belief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association com-

posed in whole or in a part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia. (Mar. 23, 1932, c. 90, Sec. 13, 47 Stat. 73.)

33. Whether or not the facts in the case at bar constitute a "labor dispute" as contemplated by the provisions of the above Act is not entirely free from doubt. The Master has given this question careful and painstaking consideration.

The tendency of the courts recently has been to grad-
164 ually broaden the conception of the legitimate purposes of the labor union. In very recent cases the courts have gone to great length to hold that practically any bone fide disagreement involving labor unions and employers constitutes a labor dispute under the terms of the above Act. In the case of *Lauf* v. *Shinner,* 303 U. S. 323, decided in February of this year, the Supreme Court reversed the findings of the District Court and of the Circuit Court of Appeals, both of which had found that no labor dispute was involved therein and held that the facts therein disclosed that a labor dispute was involved. The facts in that case are fully set forth in the opinion hereafter quoted.

The following language of the opinion is pertinent to the question herein under consideration.

"This is a suit to restrain the petitioners from picketing the respondent's place of business; from coercing the respondent to discharge any of its employes who do not belong to the petitioning union, or to compel them to become members of the union and to accept it as their bargaining agent and representative; and from advertising that the respondent is unfair to organized labor or molesting customers or prospective customers or persuading them to cease patronizing it. After a hearing, and upon findings of fact and conclusions of law, the District Court granted a preliminary injunction. The Circuit Court of Appeals affirmed. (*Lauf* v. *Shinner & Co.*, 82 F. (2d) 68.) Upon final hearing the parties relied upon the record as made in the preliminary hearing and some additional testimony.

The District Court found the following facts: The respondent is a Delaware corporation maintaining five meat markets in Milwaukee, Wisconsin. The petitioners are, respectively, an unincorporated labor union and its business manager, citizens and residents of Wisconsin. The respondent's employees number about thirty-five; none of them are members of the petitioning union. The petitioners made demand upon the respondent to require its employes, as a condition of their continued employment, to become members of the union. The respondent notified the employes that they were free to do this and that it was willing to permit them to join but they declined and refused to join. The union had not been chosen by the em-

ployes to represent them in any matter connected with
165 the respondent. For the purpose of coercing the re-

spondent to require its employes to join the union and to accept it as their bargaining agent and representative, as a condition of continued employment, and for the purpose of injuring and destroying the business if the respondent refused to yield to such coercion, the petitioners conspired to do the following things and did them; they caused false misleading signs to be placed before the respondent's markets; caused persons who were not respondent's employes to parade and picket before the markets; falsely accused respondent of being unfair to organized labor in its dealings with employes, and by molestation, annoyance, threats, and intimidation prevented patrons and prospective patrons of respondent from patronizing its markets; respondent suffered and will suffer irreparable injury from the continuance of the practice and customers will be intimidated and restrained from patronizing the stores as a consequence of petitioners' acts. There is more than $3,000 involved in the controversy.

The District Court held that no labor dispute, as defined by federal or state law, exists between the respondent and the petitioners or either of them; that the respondent is bound to permit its employees free agency in the matter of choice of union organization or representation; and that the respondent had no adequate remedy at law. It entered a final decree enjoining the petitioners from seeking to coerce the respondent to discharge any of its employes for refusal to join the union or to coerce the respondent to compel employes to become members of the organization, from advertising that the respondent is unfair to organized labor, and from annoying or molesting patrons or persuading or soliciting customers, present or prospective, not to patronize the respondent's markets. * * *

First. The District Court erred in holding that no labor dispute, as defined by law of Wisconsin, existed between the parties.

Third. The District Court erred in granting an injunction in the absence of findings which the Norris-La Guardia Act makes prerequisites to the exercise of jurisdiction.

Citing Section 13 (c) of the said Act. * * *

Section 7 declares that "no court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined" except after a hearing of a described character, "and except after findings of fact by the Court, to the effect (a) that unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained" and

that no injunction "shall be issued on account of any
166 threat or unlawful act excepting against the person or

persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same. * * *" By subsections (b) to (4) it is provided that relief shall not be granted unless the court finds that substantial and irreparable injury to complainants' property will follow; that as to each item of relief granted greater injury will be inflicted upon the complainant by denying the relief than will be inflicted upon defendants by granting it; that complainant has no adequate remedy at law; and that the public officers charged with the duty to protect complainants' property are unable or unwilling to provide adequate protection. There can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States. The District Court made none of the required findings save as to irreparable injury and lack of remedy at law. It follows that in issuing the injunction it exceeded its jurisdiction.

Fourth. The Court of Appeals erred in holding that the declarations of policy in the Norris-LaGuardia Act and the Wisconsin Labor Code to the effect that employes are to have full freedom of association, self-organization, and designation of representative of their own choosing, free from interference, restraint or coercion of their employers, puts this case outside the scope of both acts since respondent cannot accede to the petitioner's demands upon it without disregarding the policy declared by the statutes. This view was expressed in the court's first opinion on the appeal from the issue of an interlocutory injunction, and the opin-

ion on the appeal from the final order adopts what was said on the earlier appeal as the law of the case. We find nothing in the declarations of policy which narrows the definition of a labor dispute as found in the statutes. The rights of the parties and the jurisdiction of the federal courts are to be determined according to the express provisions applicable to labor disputes as so defined."

34. Counsel for Plaintiffs cites the case of *United Electric Coal Companies* v. *Rice*, 80 Fed. (2d) Page 1 as authority for the contention that no labor dispute exists in the instant case. The said Rice Case was decided by the Circuit Court of Appeals for the 7th Circuit in 1935, prior to the recent decisions of the Supreme Court of the United States on similar questions.

167 That was a case growing out of a dispute between two labor unions in which an employer was in no way involved. Each of the labor unions claimed the right to represent the employees. By reason thereof the employer, who was the Plaintiff in the case, was prevented from operating his business. The Court in that case altho under somewhat different statement of facts than the instant case, held that no labor dispute was involved. The Court, however, in discussing the case made the following statement:

"Of course, there may be a seeming controversy between two unions which is in reality merely a labor dispute between the employer and employees. Such a situation falls within the meaning of the term 'labor dispute'. The employer may not avoid inclusion in a labor dispute if he participates in union activity which directly or indirectly influences or affects employment relations."

35. In the very recent case of *Grace Company* v. *Williams*, 96 Fed. (2d) 478, the Circuit Court of Appeals for the Eighth Circuit held that a labor dispute was involved therein and cited as its authority *Lauf* v. *Shinner, supra,* and *New Negro Alliance* v. *Sanitary Grocery*, 58 Supreme Court Reporter, 703, decided March 28, 1938. The Court further held that the Plaintiff was not entitled to an injunction against the alleged acts of violence charged because the complaint failed to allege facts sufficient to satisfy the requirements of the Norris-LaGuardia Act. Specifically, that the complaint failed to allege that the public officers charged with the duty of protecting the Plain-

168 tiff's property were unable or unwilling to furnish adequate protection.

36. The Master is of the opinion that the dispute involved in the instant case bring it within the provisions

of the Norris-LaGuardia Act in that it involves persons engaged in the same industry, trade, craft or occupation, namely,—the milk industry; that it is a dispute between one or more employers or associations of employers and one or more employees or associations of employees and between one or more employees or associations of employees, and one or more employees or associations of employees. The testimony of defendants' witnesses is to the effect that they have attempted for some time to unionize the employees of the Plaintiff Dairies and other cut-rate Dairies; that the picketing complained of herein is an effort to compel the vendors, and wagon drivers employed by the Plaintiff Dairies to join the defendant union for the purpose of improving working conditions and wages of said vendors and employees of the Plaintiff Dairies, and that the working hours and wage scale of Plaintiff Dairy's employees is lower than the union scale.

37. Said defendants also contend that the alleged Plaintiffs' union is not a completed labor union; that there is no contract existing between said alleged union and
169 said Plaintiff's Dairies which fixes the hours of labor and compensation of its employees.

38. The contracts between the Plaintiff Dairies and the Plaintiff union were introduced in evidence as Plaintiff's "Exhibits #4 and #5." At most they are only temporary agreements providing that within sixty days thereafter the company and the union will negotiate an agreement covering all questions of wages, hours and conditions of employment. "Exhibit #4" is dated April 18, 1938, and "Exhibit #5" is dated May 3, 1938. More than sixty days had elapsed before the conclusion of the hearings herein, but no showing was made that any permanent agreements had been entered into. Whether or not the parties in question will ever enter into such an agreement is entirely problematical. In view of the foregoing the Master finds that the Plaintiff Dairies are not now and have not been operated under a contract with a Labor union fixing the terms and conditions of employment. While the employees of the Plaintiff Dairies have procured a Charter to form a Labor Union and have elected officers thereof, nevertheless so far as the record herein discloses no permanent agreement covering terms and conditions of employment have been discussed or agreed upon.

39. In harmony with the trend of the recent holdings of the Courts, particularly the United States Supreme

Court, the Master finds that a labor dispute is involved
170 herein and that under the provisions of the Norris-LaGuardia Act the Master is prohibited from enjoining peaceful picketing of the stores purchasing and distributing the so-called cut-rate products of the Plaintiff Dairies.

40. The further question is raised herein as to whether or not under the showing in this cause defendants have committed such acts of violence as to entitle the Plaintiffs to an injunction under the provisions of Section 107 of the Act above quoted.

41. In the case of "*Goldfinger* v. *Feintuch*" decided by the Court of Appeals of the State of New York December 7, 1937, 11 N. E. (2d) Page 910, the facts were somewhat analogous to the case at bar. In that case the picketing was done at stores handling the alleged non-union product. The Court in disposing of the case said:

"Within the limits of peaceful picketing, however, picketing may be carried on not only against the manufacturer but against a non-union product sold by one in unity of interest with the manufacturer who is in the same business for profit. Where a manufacturer pays less than union wages, both it and the retailers who sell its products are in a position to undersell competitors who pay the higher scale, and this may result in unfair reduction of the wages of union members. Concededly the defendant union would be entitled to picket peacefully the plant of the manufacturer. Where the manufacturer disposes of the product through retailers in unity of interest with it, unless the union may follow the product to the place where it is sold and peacefully ask the public to refrain from purchasing it, the union would be deprived of a fair and proper means of bringing its plea to the attention of the public."

171 In the above mentioned case it was held that the union had the right to follow the non-union product into the hands of the distributors, who were independent dealers, and to picket their place of business in order to bring to the attention of the public the fact that they were handling non-union goods. One of the Justices specially concurring in said opinion, did so on the sole and only ground that there was a unity of interest between the manufacturer and the retail dealer, under which circumstances he held that the union had a right to allow the goods and to peacefully picket the retail stores in question: that in the absence of such unity of interest to picket such stores would amount to a "secondary boycott". The meaning of

the expression "unity of interest" is not clearly defined. The only unity of interest disclosed by said opinion is the interest that the manufacturer had in seeing that his products were sold by said retail stores to the public. In the instant case the Plaintiff Dairies have a like unity of interest in seeing that their products are sold by the cut-rate stores to the public. It will be further noted that the most recent decisions of the United States Supreme Court as well as of the State Court show a trend towards the right of a labor union to bring to the attention of the public the fact that non-union made goods are being dealt in by the retailer. These decisions are in harmony with the constitutional right of the freedom of speech. It, there-
172 fore, follows that there being a unity of interest there is no secondary Boycott.

42. As to whether or not the acts complained of in the case at bar constitute such violence as to entitle the plaintiffs to an injunction even though a labor dispute exists, the Norris-LaGuardia Act provides that before such injunction may issue certain findings must be made by the Court as provided in Subdivisions (b), (c), (d) and (e) of Section 107 thereof above quoted.

43. The Master further finds that the Plaintiffs have not established the fact that they have no adequate remedy at law and have not alleged or proved that the public officers charged with the duty to protect their property are unable or unwilling to furnish adequate protection. In conformity with the rule laid down in the case of *Lauf* v. *Shinner*, Supra, the absence of such findings renders the Court powerless to issue such injunction as prayed for by said Plaintiffs.

44. It also appears from the evidence before the Master that certain of the cut-rate milk stores that handled the products of the Plaintiff Dairies were picketed by members of the Defendant Union; that such picketing was usually indulged in for a number of days during which
173 time said pickets sought to induce the offending storekeepers to discontinue the purchase of such milk from the Plaintiff Dairies; that in several instances where their efforts were unsuccessful said pickets were withdrawn and within a few days thereafter, usually during the night the store of the storekeeper (some of whom were poor women struggling to make a living) was either bombed or bricks were thrown through the plate glass windows of such stores or other acts of violence were committed. To request the Master to conclude and find, in the absence of proof of the

identity of the guilty culprits, that there was no connection between such acts of violence and the Defendant Union, or some of its members, is to overtax the credulity of the Master.

The Master cannot condone or too severely condemn the resort to such malicious and cowardly conduct in support of any cause. Such lawless conduct has no place under our form of Government and the few lawless, radical union leaders or members who resort thereto are not only a blight upon the righteous cause of honest labor but reflect discredit upon our country and upon our American civilization as well.

Conclusion.

The Master, therefore, recommends that an Order be
174 entered herein denying the relief prayed for and dismissing the Bill of Complaint for lack of jurisdiction.

Respectfully submitted this 6th day of August, A. D., 1938.

Charles A. McDonald,
Master in Chancery, United States District Court.

175 In the District Court of the United States

For the Northern District of Illinois,

Eastern Division.

Lake Valley Farm Products, Inc., a Corporation, *et al.* *vs.* Milk Wagon Drivers' Union, Local 753, *et al.*	In Equity, No. 16073.

MASTER'S CERTIFICATE OF SERVICES.

The undersigned, Charles A. McDonald, Master in Chancery, to whom as such Master, the question of a Preliminary Injunction was referred pursuant to an Order of Court entered herein on May 23, 1938, respectfully reports that he rendered services as hereinafter shown:

Carefully examined the lengthy Bill of Complaint and the Answer thereto.

May 24, 1938, held conference with attorneys Arthur Seelig and David Riskind.

May 25, 1938
May 26,
June 1,
June 3,
June 6,
June 7,
June 9,
June 10,
June 11,
June 15,
June 20,
June 22,
June 27,
June 30.
} Held hearings on said dates at which times testimony on said Bill of Complaint and Answer was taken.

June 27, 1938, received Defendant's abstract of evidence consisting of 110 typewritten pages.

July 5, 1938
July 7, 1938
} Held hearings and heard Argument of respective counsel.

July 7, 1938, received Defendant's memo of authorities, consisting of 64 typewritten pages.

Received Plaintiff's briefs and citation of authorities, consisting of 65 typewritten pages.

July 13, 1938, received Plaintiff's reply to Defendant's argument and comments on defendant's authorities, consisting of 14 typewritten pages.

176 Carefully read and examined the aforesaid documents and numerous cases therein cited, which consumed many days of the Master's time. In addition to the time spent at the hearings which approximated ten full days in time the Master spent upwards of twelve full days in time in analyzing and considering the evidence, briefs and authorities above cited, and thereafter prepared the Master's Report which is filed herewith, for which services he has not been compensated.

In the opinion of the Master the fair and reasonable charge for services rendered herein, is the sum of Twenty-Five Hundred Dollars ($2500.00).

The attorneys for the respective parties have approved this charge as fair and reasonable and each have agreed to advance half thereof.

The Master therefore respectfully requests that he be allowed the sum of Twenty-Five Hundred Dollars ($2500.00) for the above enumerated services, and that said amount

be taxed as costs herein in such manner as the Court may see fit.

Respectfully submitted this 6th day of August, A. D., 1938.

Charles A. McDonald,
Master in Chancery, United States District Court.

278 And on, to wit, the 18th day of August, 1938, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Exceptions to Master's Report, with the exclusion of certain pages and certain exhibits, in words and figures following, to wit: Filed Aug. 18, 1938.

279 DISTRICT COURT OF THE UNITED STATES OF AMERICA.

* * (Caption—16073) * *

EXCEPTIONS OF PLAINTIFFS TO MASTER'S REPORT.

To the Honorable, the Judges of the District Court of the United States, for the Northern District of Illinois, Eastern Division:

Now come the Plaintiffs, Lake Valley Farm Products, Inc., a corporation; Amalgamated Dairy Workers Local, Industrial Union No. 819, a voluntary unincorporated Association; Josef Wagner, doing business as Wagner Dairy Products; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin, and hereby except to the report of the said Charles A. McDonald, a Master in Chancery of this Court, which report was heretofore filed in this Court, on August 8th, 1938, in the following particulars, to wit:

280 First Exception.

That the Master erred in his conclusions concerning Interstate Commerce which are set forth and contained in Paragraphs 28 to 31 both inclusive appearing at Pages 16 to 19 of said Report in the following respects:

A. That in Paragraph 28, Page 16, the Master states: "The Plaintiffs contend that the milk in question which is produced in Wisconsin and brought into the State of Illinois in interstate commerce continues to flow in interstate commerce after it is mixed with domestic milk, pasteurized,

bottled, delivered to the cut-rate stores, and is in the course of delivery to the consumers." And at the end of said Paragraph the Master states: "Many of the cases involving the question of taxation by different states lay down strict rules as to when interstate commerce ceases and the handling of the product becomes purely interstate."

B. At the beginning of Paragraph 29, Page 17, the Master states: "There are also numerous cases pertaining to common carriers which follow a rule of law somewhat at variance with the rule contended for in labor cases of this character."

C. The Plaintiffs urge that the Master erred in interpreting the question, in that any cases concerning the right of taxation by a local state, or cases concerning common carriers have absolutely no application to the case at bar; that all of the cases which determine at what point a shipment ceases to be in interstate commerce are cases involving the right of a state to tax or are transportation or similar cases, neither of which groups is at all applicable to the case at hand.

D. Continuing with Paragraph 29, the Master says: "One of the more recent decisions of the United States Supreme Court, analogous to the case at bar, is contained in the case of *Schechter Corporation* v. *The United States*, 281 295 U. S. 495, in which the N. R. A. Act was declared unconstitutional Mr. Chief Justice Hughes in passing upon the question involved therein, used the following language:

"The undisputed facts thus afford no warrant for the argument that the poultry handled by the defendants at their slaughter house markets was in a 'current' or 'flow' of interstate commerce and was thus subject to congressional regulation. The mere fact that there may be a constant flow of commodities into a state does not mean that the flow continues after the property has arrived and has become co-mingled with the mass of property within the state and is there held solely for local disposition and used. So far as the poultry here in question is concerned, the flow in interstate had ceased. The poultry had come to a permanent rest within the state. It was not held, used or sold by defendant in relative to any further transactions in interstate commerce and was not destined for transportation to other states."

It will be noted that the poultry in question had come to a permanent rest within the State in question; that it was not held, used or sold in relation to any further transactions in interstate commerce and was not destined for trans-

portation to other states. In that respect, the case is similar to the case at bar and is an authority bearing directly on the question involved herein."

E. The above quotation has been set forth at length from the Master's report in order that the error of the Master will be apparent. The Master is in error in using the Schechter case to determine this question, for the reason that the Supreme Court in that case was not called upon to consider the question of Restraint of Trade, as in the present case, but to determine an entirely different question, i. e. the extent to which the delegation of power may reach in the regulation of wages and hours in a local industry. Any reference in the Schechter case to interstate commerce is merely incidental and only to the effect that the delegation of power does not extend to the control of wages and hours in the local poultry business. This
282 case never was authority in the case at bar and particularly since the National Labor relations cases 301 U. S. 1, which determine that labor relations may be the subject of Federal regulation and very greatly expanded the concept as to the inclusiveness of the term "Interstate Commerce," this case is probably not authoritative on any subject.

F. The Master erred in Paragraph 30, Page 18, in his comments on the Baldwin *vs.* Seelig case, when he stated that this case "is not an authority supporting the proposition that milk distributed or being sold in the State of New York after being pasteurized, is still flowing in interstate commerce." Whether or not this case is authoritative as to this point is not material, for the reason that the Court is not concerned with the question of whether or not the product is still flowing in interstate commerce, but is concerned only with the problem of the effect of the act or acts upon interstate commerce. This and this question only must be determined in Restraint of Trade cases.

G. In the case of Henneford *vs.* Silas, Mason Company referred to by the Master, (Paragraph 30) the United States Supreme Court commented on the Baldwin *vs.* Seelig case, as the Master has there indicated, and the construction given by the Supreme Court is the same as is placed upon the Baldwin case by the Plaintiffs and is in support of the Plaintiffs' contention as to interstate commerce.

H. In the Henneford case, the United States Supreme Court determined that although the New York Milk Control Act was ostensibly operative only as to local sales, that it, in effect, projected itself outside the borders of New York and affected sales in a foreign state and thereby af-

fected interstate commerce. This is exactly what the Plaintiffs contend in the present case. The Plaintiffs contend that although picketing and violence are ostensibly directed
at local transactions, that their direct effect is to ex-
283 tend beyond the State of Illinois and to burden and
restrain interstate commerce. When it is considered that from the point of local sale back to the point of shipment in the foreign state, is only a matter of hours, there can be no question as to the direct and immediate effect of such acts of interference. Just as in Restraint of Trade cases such as the present case, the question to be determined is the effect upon interstate commerce and not the point at which the interference is ostensibly applied.

I. At Paragraph 31, Page 19, the Master states, "This cause viewed in the light of the Court's reasoning in the above referred to cases convinces the Master that the milk resting in the store of the cut-rate retailer had ceased to flow in interstate commerce; that, therefore, the acts complained of do not constitute such an interference with interstate commerce as would bring the case within the purview of the Sherman Anti-Trust law or the Clayton Act." The cases referred to by the Master in the foregoing quotation are; Baldwin *vs.* Seelig, Schechter *vs.* United States and Henneford *vs.* Silas Mason Company and none of these cases were Restraint of Trade Cases and the Sherman or Clayton Acts were not involved, and hence these cases could not possibly have so held. To go to cases on other subjects and select isolated quotations presumably applicable is misusing or misconstruing the law. There is no scarcity of law in the hundreds of Restraint of Trade cases to determine the case at bar.

294 Second Exception.

Labor Dispute.

In determining as to the existence of a labor dispute, the Master at Paragraph 32, Pages 19, 20 and 21 partially sets out certain sections of the Norris-LaGuardia Anti-Injunction Act, and further treats this topic in paragraphs 32 to 36 of the Report.

A. At Paragraph 33, Page 21, the Master says that
295 whether a labor dispute exists, is not entirely free
from doubt and then the Master quotes most extensively from the case of *Lauf* v. *Schinner*, 303 U. S. 323.

The Master erred in using the Lauf *vs.* Schinner case as a criterion, because the facts and the statute involved in that

case were entirely different then in the present case. In that case the facts differed in that the situation did not involve picketing at stores of third parties; the case was not determined on the question of secondary boycott; (which is the real issue in this case); the plaintiffs did not have a written agreement with the Union as to collective bargaining; the Norris-LaGuardia Act was not involved, but rather the Wisconsin State Anti-Injunction Act was considered, which State act is materially broader than the Norris-LaGuardia Act, and which State act expressly excludes cases involving secondary boycott. In addition, no acts of violence were involved and vigorous efforts at organization were present. The very quotations selected by the Master indicate the dissimilarity of fact and law from the present case.

298 E. That by virtue of the foregoing the Master has erred in his conclusion as to the legal issue involved as to the existence of a labor dispute as defined by the Norris-LaGuardia Act.

Third Exception.

That the Master erred in paragraph 38 when he states that the contracts between the Plaintiff Union and Plaintiff Dairies are "at most—only temporary agreements," etc. The contracts by their very terms provide that the Plaintiff Dairies accept the Plaintiff Union as the sole bargaining representative of all of their workers for the period of one year.

299 Fourth Exception.

That the Master erred in paragraph 38 in his finding that the Plaintiff Dairies are not operating under a contract, fixing specific hours of work and wages, etc., for the reason that such question is not involved in this case and need not be considered. That if all of the workers have designated one union as their representative and such union has been recognized by the employer, that another union may not interfere with such designation.

Fifth Exception.

That the Master erred in paragraph 39 of the Report in his finding that a labor dispute is involved for the reason that no such dispute is involved because the Plaintiff Union has been designated as the sole representative of all of the Plaintiff Dairies' workers; that contracts recognizing such designation are in effect, no actual dispute exists as to

terms or conditions of employment between the workers of the Plaintiff Dairies and any persons whatsoever, but that the picketing and violence are means used by the defendants to carry out and give effect to a secondary boycott, by which means the defendants seek to prevent the sale of cut-rate milk and to effect a monopoly of milk distribution in restraint of trade.

Sixth Exception.

The Master erred in paragraph 41 in applying the case of Goldfinger *vs.* Feintuch as to the right to picket independent stores seeling a manufacturer's product for the following reasons: (a) This case is a decision of the State Court of New York and is not the Law of this District or this Tribunal. (b) This case has construed the pro-
300 visions of the New York Anti-Injunction Act, which Act, as is apparent from the decision of the case, is considerably more inclusive in its terms than the Norris-LaGuardia Act. (c) As is apparent from the Master's report, the Company operated a non-union shop. (d) Only one union was involved, so that the same could constitute a "labor dispute." (e) The union involved had sought by bona fide means, to represent the unorganized workers, so that an actual dispute as to the right of representation existed. None of these circumstances are present in the instant case.

Seventh Exception.

The Master erred in Paragraph 41 in concluding that there is no secondary boycott, for the reason that the Master failed to make any finding of facts upon which such conclusion could rest.

302 Ninth Exception.

The Master erred in paragraph 43 in finding that plaintiffs have not established the fact they have (a) no adequate remedy at law and have (b) not established that the public officers charged with the duty to protect their property are unable or unwilling to furnish adequate protection. The Transcript indicates otherwise, and witness Weiss, on behalf of Lake Valley Dairy, at the opening of the case testified that fifteen to twenty stores distributing their products had been lost in the month preceding the filing of the case, by virtue of the acts of the defendants, (Transcript 133); and testified that twenty-five to thirty stores had been

similarly lost during the pendency of the proceeding, (Tr. 1230); that there was no way to ascertain the number of patrons that had been so lost, (Tr. 134); that the picketing of the Defendant Union causes a diminution of business, (Tr. 127); that more than one hundred plaintiff stores had been picketed, (Tr. 124); that the entire history of independent cut-rate milk distribution in the city of Chicago is filled with numerous instances of mombings of dairy plants, smashing of machinery, overturning of delivery trucks, kidnaping of drivers and delivery equipment, smashing of windows, throwing of stench bombs, sitting fire to and the committing of various other acts of violence and destruction to the property and person of the independent stores distributing cut-rate milk and the storekeepers operating the same, (Tr. 111, 112, 113); and that the witness Frank Wagner, on behalf of the plaintiff, Wagner Dairy Products similarly testified, (Tr. 336 to 340); to the same effect are the witnesses Entin, Tr. 2; Sitko, Tr. 16; Bazik, Tr. 34; Fischer, Tr. 41; etc.; that 2500 to 3000 independently owned stores distribute the products of the independent cut-rate dairies of Chicago (Weiss-Transcript 100); that the acts of the defendants have prevented the delivery of other necessary supplies into the stores selling 303 cut-rate milk, (Wagner, Tr. 335); Sitko, Tr. 23; Moorhatch, Tr. 61), etc.; the defendant, Bryant, admitted that deliveries to cut-rate stores had been prevented, (Tr. 862); that both plaintiff dairies had made complaints and reported acts of violence and other illegal acts to the police and state's attorney in every year from 1932 to the present time, (Tr. 262 to 266, 349, 351 and 352), etc.

That the Master further erred in that if the above specific findings had been made, that said findings would establish that the Plaintiffs have no adequate remedy at law and that the plaintiffs have sought aid from the local authorities, but that by the very nature of the facts and the great number of distribution points involved, that protection against violence cannot be afforded by the local authorities.

Tenth Exception.

That the Master erred in his conclusion recommending that the Bill of Complaint be dismissed for lack of jurisdiction, for the reason that the order of reference to said Master was only for the purpose of considering as to the issuance of injunction and the Master is therefore without power or authority to consider or recommend as to the dismissal of the action.

Eleventh Exception.

That the Master erred in failing to make pertinent specific findings of fact upon which could be based a legal conclusion as to whether or not the acts of the defendants constitute a restraint of trade or monopoly of interstate commence as defined by the Sherman Act and Clayton Act.

Twelfth Exception.

That the Master erred in failing to make specific find-
304 ings of facts as to Interstate Commerce as follows: that the Plaintiff Lake View Cooperative of Watertown, Wisconsin ships daily about 70,000 pounds of fluid milk by tank truck from Wisconsin to the dairy plants of the plaintiff Lake Valley and other Chicago dairies, (Darcy 140; Weiss, 87 and 88, 193); that part of the milk received daily by the Wagner Dairy Products is produced in the State of Wisconsin, (Tr. 322 and 323); that approximately 40% of all of the milk sold in the Chicago area is produced in and shipped from States other than Illinois, (Tr. 89, 141, 147, 328); that approximately 75% of all of the cream sold in the Chicago area is separated from milk produced in States other than Illinois, (Tr. 90, 145, 328); that foreign milk is commingled, sold in competition with, and is indistinguishable from domestic milk distributed in the Chicago area, (Tr. 140 and 141, 90, 328); that upon receipt by the Plaintiff Dairies the milk is at once pasteurized and bottled, which are automatic processes and require but a very short time in all, (Weiss, Tr. 91, 196 and 197; Wagner, 325; Lamson 571 and 572); that pasteurization requires only about one-half hour; that nothing is added to or taken from the milk in such process, (Weiss 91, 196; Wagner 325; Lamson 571); that immediately after bottling the milk is distributed to the stores selling the same, (Weiss, 92; Wagner, 326); that only a few hours separate the receipt at the store from the point of origin in Wisconsin, (Weiss 92, Wagner, 326, Lamson, 573); that the delivery equipment used in distributing the Plaintiff Dairies' milk has been overturned, dumped into the Chicago River, burned and subjected to other violence, (Weiss, truck in river; 113, Wagner, tank truck seized by the Defendant Union, 346 to 350; Kuellman, truck seized and set fire to, 462 to 464; Defence Counsel Riskind admits Defendant Union paid $1125.00 to compensate for destruction of Lake View Dairy delivery truck, 1081;) etc., etc.

That if the above specific findings of fact had been
305 made the direct relationship of milk distribution to
Interstate Commerce would have been established and the acts of the Defendants would be shown to directly burden and restrain Interstate Commerce in violation of the Sherman Act.

Thirteenth Exception.

That the Master erred in failing to make pertinent specific findings of fact upon which could be based a proper legal conclusion as to whether or not a labor dispute exists as defined by the terms of the Norris-LaGuardia Act.

Fourteenth Exception.

That the Master erred in failing to make specific findings of fact as to whether or not a Labor Dispute exists as defined by the terms of the Norris-LaGuardia Act, as follows: that the Plaintiff Union represents all of the workers of the Plaintiff Dairies, and that all of said workers are members of the Plaintiff Union (Tr. 155, 330, etc.); that written agreements exist between the Plaintiff Union and the Plaintiffs Dairies wherein the Plaintiff Union is designated as sole representative for collective bargaining of all of the dairy workers, (Wagner, Tr. 329; Weiss, 368; Igoe, 157 and 275); that the Defendant Union has made no attempt to organize the Plaintiff Dairies, (Defendant Bryant admits never talked to either workers or employees of Lake Valley Dairy, (Tr. 856, 884); Defendant Sumner admits same, (Tr. 994); no testimony appears as to any attempts at organization); that the Defendant Union is a craft union to which only employees of the designation of milk wagon drivers, may be members, (Defendant Sumner, 973); (Defense Counsel Riskind, 333; etc.); that the vendors of the Plaintiff Lake Valley Farm Products are not employees, but "independent contractors", (Weiss,
94; Igoe, 283, etc.); that vendors such as distribute the
306 products of the Plaintiff Lake Valley Farm Products
are not amenable to membership in the Defendant Union, (Defendant Bryant, Tr. 820, 851, 853; answer of the Defendants, paragraphs 26, 28, 32, 37, 43, etc. Constitution and By-Laws of Defendant Union); that distributors of the Lake View Dairy were denied membership in the Defendant Union because said dairy sold its products at cut-rate prices, (Weiss, 1169); that the Plaintiff Union had not sought to organize any of the workers of dairies

employing members of the Defendant Union, (Igoe, Tr. 156, etc.).

That if the above specific findings of fact had been made the fact that no labor dispute existed would have been evident.

Fifteenth Exception.

That the Master erred in failing to make pertinent specific findings of fact upon which could be based a proper legal conclusion as to whether or not the acts of the Defendants constitute an enjoinable secondary boycott and conspiracy to ruin Plaintiff Dairies' businesses.

Sixteenth Exception.

That the Master erred in failing to make specific findings of fact showing that the acts of the Defendants constitute an enjoinable secondary boycott and conspiracy to ruin Plaintiff Dairies' businesses, as follows: that the cut-rate milk distribution in the Chicago area has been subjected to continuous violence during its operation over the past five years, (Weiss 111 to 122, Wagner 334, etc., Bryant 824), that during such period, cut-rate dairy plants have been bombed machinery smashed, workers beaten and various other acts of violence purpetrated, (Weiss 111 to 122; Wagner 338, etc.); that during said time and at the present time, independently owned stores distributing cut-rate
307 milk have been bombed, set afire, have had windows broken, stench bombs have been thrown into the premises and other acts of violence perpetrated, (Weiss, 111 and 112; Wagner 338, etc., Igoe, 276 and 277; Wilson 170; Entin 9; Bazik 40; Fischer, 43; Kuellman, 461); that the picketing by Defendant Union and violence has taken place only at stores selling cut-rate milk, (Wagner, 334; that 50 to 100 stores picketed at present time, 337; Weiss 67, 114 to 122; Defense Witness Wald, 728, etc.); that the pickets of Defendant Union have stopped deliveries of other needed food products into the stores, (Wagner, Tr. 335; Moorhatch, Tr. 61; Entin, 6; Sitko, 23; Defendant Bryant admits same, 862 and 863); that delivery trucks have been subjected to violence, (Lake View Dairy truck dumped in river, 113; Wagner dairy tank truck seized . . . 346 to 350; Lake View truck destroyed and paid for by Defendant Union, 1081; cut-rate truck burned, 462-464); that the Defendant Union's attorney has defended various of its members for acts of violence to cut-rate stores, (Riskind admits, Tr. 1084; Defendant Sumner admits, 1200; 463); that pickets have prevented

ingress to cut-rate stores, (Sitko, 20; Bruce 1000, etc.); that the real purpose of picketing and violence is to prevent sale of cut-rate milk, (348, 1175, 169, 49, etc.) that cut-rate distribution effects savings of about 3¢ per quart, (Plaintiff Witnesses: Wagner, 334, 340, Weiss, 97; Igoe, 148; etc., Defendant Witnesses: Gerstein, 637; Shostook, 670; Cavico, 682; Job, 690; Wald, 733; Richards, 768; Stelle, 782, etc.); that each cut-rate driver by making only 10 to 15 wholesale stops distributes 4 to 5 times as much milk daily as does a Defendant Union retail driver by making approximately 120 stops, (same transcript pages as the foregoing); that because fewer stops are made the Plaintiffs' distributor work shorter hours than the Defendant and retail routemen, (Igoe testifies, 4 to 5 hours daily, 149 and 150, 163, etc.); that Defendants admit opposition to the cut-rate vendor method of distribution, (Bryant 837 and 838, 853 and 854; Sumner 951 and 967, etc.); that in cases where picketing was not successful in causing the store 308 to discontinue selling cut-rate milk, that the pickets were removed and the windows smashed, (Wagner 336; Hall, 473); that the Defendant Union has circulated a circular amounting to a blacklist against the Plaintiff Dairy (Bryant, 917)

That if the above specific findings of fact had been made that the same would demonstrate that the Defendants have conspired to ruin the Plaintiff Dairies' businesses and that the acts committed by the Defendants are the means employed to give effect to and carry out such boycott.

Seventeenth Exception.

That the Master erred in failing to make specific findings of fact showing that the acts of the Defendants constitute a conspiracy and monopoly in unlawful restraint of Interstate Commerce.

Eighteenth Exception.

That the Master erred in failing to make specific findings of fact showing that the acts of the Defendants constitute a conspiracy and monopoly in unlawful restraint of trade and commerce, as follows: that the defendants, as officers of the Defendant Union, receive high salaries and are elected for life, (Bryant, Tr. 872 and 875 to 878, Sumner, 993); that no general election has been held by the Defendant Union since 1916, (Bryant, 874); that members of the Defendant Union distribute the major portion of all milk sold in the Chicago area, and represent the workers of all

dairies, except a few cut-rate dairies, (Bryant 902, Wagner 344); that approximately 80% of all of the members of the Defendant Union are employed by the five largest dairies in the city of Chicago, (Bryant, 886, Sumner, 974); that if the small number of cut-rate dairies were eliminated, that the Defendant Union would control all milk distribu-
309 tion, (Wagner, 346; Bryant, 902, etc.); that the Defendant Sumner admitted that he and the Defendant, James Kennedy were arrested for the beating of employees of the Blue Ribbon Dairy, a cut-rate dairy, (1202); Defendant Sumner admits that he, together with certain milk dealers and others were indicted in connection with the Good Fellowship Club in 1925, which Club was forced to disband by action of the State's Attorney as a cloak for price fixing and terrorism (1202 to 1208); that the Defendants, Sumner, Fitchie, Bryant and others, were indicted by the Superior Court of Cook County, Illinois in 1921 on a charge of conspiracy (1212); that the Supreme Court of the State of Illinois in 1919 confirmed a sentence against the Defendant Sumner for violating a labor injunction and that Sumner actually served thirty-two days of a jail sentence therefor, (1216); that Sumner was arrested in 1908 for slugging a milkman and indicted in 1905 for conspiracy to injure business, (1217, 1221).

That if the above specific findings of fact had been made, the special interest of the Defendant Union and its officers in preventing cut-rate competition would have been shown and a proper conclusion and finding could be made as to conspiracy and monopoly to unlawfully restrain Interstate Commerce.

Nineteen Exception.

That the Master erred in failing to find that the acts of violence in Paragraph 44 are one of the means used by the Defendants to give effect to and carry out the purposes of an unlawful boycott and conspiracy to ruin the business of Plaintiff Dairies.

Twentieth Exception.

That the Master erred in failing to find that the picketing by the Defendants is but one of the means used by the Defendants to give effect to and carry out the purposes of an unlawful boycott and conspiracy to ruin
310 the business of Plaintiff Dairies, under the guise of a pretended Labor Dispute.

Twenty-first Exception.

That the Master erred in failing to find that the acts of the Defendants, violate the terms of the Sherman and Clayton Anti-Trust Laws.

Twenty-second Exception.

That the Master erred in failing to find that the acts of the Defendants burden and restrain and tend to create a monopoly of trade and commerce, as defined by the Anti-Trust Laws of the United States.

Twenty-third Exception.

That the Master erred in failing to find that no labor dispute exists as defined by the terms of the Norris-LaGuardia Act.

Twenty-fourth Exception.

That the Master erred in failing to find that the Defendants had made no effort to organize the workers of the Plaintiff Dairies.

Twenty-fifth Exception.

That the Master erred in failing to find that the Defendants seek to prevent the sale of cut-rate milk in the Chicago area and to unlawfully control the distribution thereof and the price to be paid therefor.

Twenty-sixth Exception.

That the Master erred in failing to rule upon and make specific findings of fact as requested in written motions filed by the respective parties and as set out in the copy of such "Request for Findings" filed with the
311 Master by the Plaintiffs, copy of which is hereto attached and identified as Exhibit "A".

Twenty-seventh Exception.

That the Master erred in Paragraph 26 of the Report in overruling and failing to consider the written motions of the respective parties to strike out certain parts of the testimony, copy of Plaintiffs' motion to strike being attached hereto as Exhibit "B", for the reason that the

Master in said paragraph admits that some of the testimony is no doubt inadmissible, and that the rules and practice of this Court require that such motions be considered and acted upon.

Twenty-eighth Exception.

That the Master erred in failing to find that the Court had jurisdiction under the Laws of the United States relating to Trusts and Monopolies.

Twenty-ninth Exception.

That the Master erred in failing to recommend that the Plaintiffs have no adequate remedy at law and will suffer irreparable damage unless an injunction issue.

Thirtieth Exception.

That the Master erred in failing to recommend that an injunction without bond issue forthwith against the Defendants, as prayed for in the Bill of Complaint herein.

Wherefore the Plaintiffs, Lake Valley Farm Products, Inc., a corporation, Amalgamated Dairy Workers Local, Industrial Union No. 819, a voluntary unincorporated Association; Josef Wagner doing business as Wagner
312 Dairy Products; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin, ask that the Report of the Master be not confirmed or approved by the Court, but that the Court shall overrule the same and that the Court make the necessary findings of fact and conclusions of law as indicated hereinabove and in the Plaintiffs' Request for Findings, a copy of which is hereto attached as Exhibit "A" and order that an injunction without bond issue forthwith as prayed for in the verified Bill of Complaint herein.

Arthur R. Seelig,
Attorney for Plaintiffs.

313 EXHIBIT "A".

DISTRICT COURT OF THE UNITED STATES OF AMERICA.
* * (Caption—16073) * *

PLAINTIFFS' REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW.

To the Honorable Charles A. McDonald, Master in Chancery of the District Court of the United States:

Now come the Plaintiffs, Lake Valley Farm Products, Inc., a corporation; Amalgamated Dairy Workers Local Industrial Union No. 819, a voluntary unincorporated Association; Josef Wagner, doing business as Wagner Dairy Products; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin, by Arthur R. Seelig, their attorney, and ask that said Charles A. McDonald, Master in Chancery of the District Court of the United States herein, set forth in his Report to be made herein, the following find-
314 ings of fact and conclusions of law thereon:

Findings of Fact:

1. That the entire process of receiving, pasteurizing, bottling and distributing of milk by the Plaintiff Dairies is a continuous process, and that all milk is distributed to the cut rate stores selling the same within twelve hours after receipt by the Dairies from the country plants.
2. That the process of pasteurizing merely involves the heating of the milk, and that nothing is physically added to or taken from the milk in the pasteurizing process.
3. That Lake Valley Farm Products receives fluid milk from the country plant at Watertown, Wisconsin, by daily shipment in interstate commerce.
4. That the Wagner Dairy Products receives fluid milk daily from the plant at Richmond, Illinois, part of which milk is produced in the State of Wisconsin.
5. That approximately 40% of all of the milk sold as fluid milk in the City of Chicago is produced in states other than the State of Illinois, and shipped into Chicago in interstate commerce.
6. That approximately 75% of all of the cream sold in Chicago is separated from milk produced in states other than the State of Illinois, and that said cream, or the

milk from which said cream is separated, is shipped into Chicago in interstate commerce.

7. That the Wagner Dairy Products, bottles milk, part of which is produced from farms in the State of Illinois, and partly from farms in the State of Wisconsin.

8. That many Chicago dairies bottle milk, part of which is produced in other states and brought into the State of Illinois in interstate commerce.

9. That milk produced in the State of Illinois is inextricably intermingled with milk produced in other states and sold in the City of Chicago.

315 10. That the sale of milk by the Plaintiff Dairies is in direct competition with the sale of milk by other Chicago dairies who receive their milk requirements partly from the State of Illinois, and partly from other states in interstate shipment.

11. That the Defendant Union has never discussed the matter of union membership with any of the workers distributing milk for the Plaintiff Dairies.

12. That no effort has been made by the Defendant Union to organize the workers distributing milk for the Plaintiff Dairies.

13. That the vendors distributing the milk products of the Plaintiff Dairies are independent contractors and not employees.

14. That the cut rate stores distributing the products of the Plaintiff Dairies are independent businesses, the owners of which are not employees of the Plaintiff Dairies.

15. That the picketing conducted by the Defendant Union has not taken place at the dairy plants of the Plaintiff Dairies.

16. That the picketing of the Defendant Union has taken place at the independently owned cut-rate stores distributing the products of the Plaintiff Dairies.

17. That the Defendant Union has none of its members employed by either of the Plaintiff Dairies.

18. That no strike or other dispute concerning wages, hours, or terms or conditions of employment exists between either of the Plaintiff Dairies and any of their respective workers.

19. That all of the employees of Plaintiff Dairies, and vendors distributing the products of such dairies, are members of the Plaintiff Union.

20. That the members of Plaintiff Union have selected and designated the Plaintiff Union as their sole representative for collective bargaining.

21. That written contracts have been entered into between the Plaintiff Dairies and the Plaintiff Union, whereby the Plaintiff Dairies recognizes the Plaintiff Union as the sole bargaining agency of the dairy workers.

316 22. That the picketing by Defendant Union has resulted in the stoppage of the delivery of necessary commodities to the cut rate stores.

23. That acts of violence and destruction have occurred to the stores selling cut rate milk in the City of Chicago throughout the past five years.

24. That during the month of May 1938, the number of pickets of te Defendant Union was increased from 12 to 140.

25. That acts of violence and destruction have occurred to the delivery equipment used in distributing the products of cut rate dairies to cut-rate stores.

26. That the Defendant Union has in certain cases paid sums of money as restitution for the destruction of delivery trucks and other property of cut-rate dairies, committed by members of the Defendant Union.

27. That acts of violence continue to be directed against cut-rate milk stores.

28. That the picketing by the Defendant Union has never taken place at stores not selling cut rate milk, and that all of the acts of violence have taken place at stores selling cut rate milk.

29. That the Defendant Union has admitted to being opposed to the vendor system of milk distribution.

30. That the Defendant Union is opposed to the sale of cut rate milk in the City of Chicago.

31. That all milk wagon drivers with the exceptions of those employed by six or seven cut rate dairies of the City of Chicago are members of the Defendant Union.

32. That the officials of the Defendant Union receive salaries ranging from $9000.00 to $11,000.00 per year, and have been elected to their respective offices for the duration of their lives.

33. That the saving in delivery cost by distribution to cut rate stores as compared with house to house delivery is in excess of 3c per quart.

317 34. That the Defendant Union is a craft union to which milk wagon drivers bearing the relationship of employee to dairies are applicable.

35. That the Plaintiff Union is an industrial union to which all persons engaged in the dairy business regardless

of the nature of the work done or the relationship they bear to the dairy, are acceptable for membership.

36. That the Defendant Union accepts for membership only persons who are employees of dairies.

37. That the By-Laws of, and the form of contract prepared by the Defendant Union, to be entered into between themselves and dairies, refers only to drivers who are employed by the dairy, and independent milk vendors are nowhere named therein.

38. That the Defendant Union has in many instances had the attorney for the union appear in Court to defend members of the Defendant Union arrested for acts of violence and destruction committed against cut-rate dairies and cut rate milk stores.

39. That acts of violence and destruction directed against cut-rate dairies and cut rate milk stores has taken place during the same period during which picketing by the Defendant Union has been carried on.

40. That the Defendant Union has distributed approximately 500,000 copies of a certain circular listing the names of the Plaintiff and other cut-rate dairies.

Conclusions of Law.

1. That the distribution of milk by the Plaintiff Dairies occurs in the current of interstate commerce as determined by the standards applicable to the Anti-Trust Laws of the United States.

2. That any interference with the distribution of milk by the Plaintiff Dairies burdens and affects interstate commerce.

3. That the Plaintiff Union is the sole representative for collective bargaining of all workers engaged in the
318 business conducted by Plaintiff Dairies.

4. That contracts exist between the Plaintiff Union and the Plaintiff Dairies wherein the Plaintiff Union is recognized as the sole representative for collective bargaining for all workers engaged in the businesses of Plaintiff Dairies.

5. That no labor dispute exists and that the provisions of the Norris-La Guardia Act do not apply.

6. That the actions of the Defendants directed against the Plaintiffs constitute a secondary boycott.

7. That picketing of stores distributing Plaintiff Dairies products is one of the means used by the Defendants to carry out and give effect to a secondary boycott.

8. That all of the acts of the Defendants are the means used by the Defendants to carry out and give effect to a secondary boycott.

9. That the acts of the Defendants constitute a conspiracy in restraint of interstate trade and commerce contrary to the Anti-Trust Laws of the United States.

10. That the acts of Defendants constitute a combination in restraint of interstate trade and commerce contrary to the Anti-Trust Laws of the United States.

11. That the acts of the Defendants constitute a conspiracy to prevent interstate shipment of milk by the Plaintiff Lake View Cooperative.

12. That the acts of the Defendants burdens and restricts interstate commerce contrary to the provisions of the Sherman Anti-Trust Act.

13. That the acts of the Defendant Union deny to the Plaintiff Dairies and Plaintiff Milk Cooperative the right to engage in legitimate business and enterprise.

14. That the acts of the Defendants amount to the taking of private property without due process of law.

15. That the effect of the acts of the Defendants is
319 to substantially lessen competition in the sale of milk contrary to the Anti-Trust Laws of the United States.

16. That the acts of the Defendants tend to create a monopoly in the trade and commerce of milk contrary to the Anti-Trust Laws of the United States.

17. That the issues involve a substantial Federal question.

18. That the issues involve an equitable question.

19. That the Plaintiff Dairies and the Plaintiff Milk Cooperative will suffer great and irreparable damage unless a preliminary Writ of Injunction issues.

20. That the Plaintiff Union will suffer great injury unless a preliminary Writ of Injunction issues.

21. That the Plaintiffs have no relief except in a Court of Equity.

Respectfully submitted,
Lake Valley Farm Products, Inc. a corporation, etc., et al.,

Plaintiffs.

By: .....

Their Attorney.

.....

Attorney for Plaintiffs.

Filed Aug. 26, 1938.

320 And on, to wit, the 26th day of August, 1938, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Exceptions to Master's Report, in words and figures following, to wit:

321 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—16073) * *

EXCEPTIONS OF DEFENDANTS TO MASTER'S REPORT.

To the Honorable, the Judges of the District Court of the United States, for the Northern District of Illinois, Eastern Division:

Now come the defendants, Milk Wagon Drivers Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson, and hereby except to the report of the said Charles A. McDonald, a Master in Chancery of this Court, which report was heretofore filed in this Court on August 8, 1938, in the following particulars, to-wit:

322 First Exception.

The Master erred in his conclusions concerning acts of violence committed by the defendant Union, or some of its members, as stated in paragraph 44, page 31 of the Master's report, in that the evidence under the law applicable to the same did not sustain said conclusion of the Master.

Second Exception.

The Master erred in failing to find that the evidence under the law applicable to the same did not sustain the allegation in plaintiffs' complaint that the defendants, or any of them, had entered into a conspiracy, the object of which was to restrain trade or injure the business of the plaintiffs.

Third Exception.

The Master erred in failing to expressly and specifically rule on the written motions made and filed by the defendants with regard to the exclusion of evidence.

Fourth Exception.

The Master erred in failing to expressly and specifically make the findings of fact according to the suggested findings of fact submitted by the defendants to the Master at the close of all the evidence.

Wherefore, the defendants, Milk Wagon Drivers Union, Local 753, et al., pray that in all other respects, the report of the Master be confirmed and approved by this Court, and that a decree be entered dismissing plaintiffs' complaint for want of equity and for want of jurisdiction in this Court.

Abraham W. Brussell,
David A. Riskind,
Attorneys for Defendants.

323 And afterwards, to wit, on the 15th day of December, 1938, nunc pro tunc as of November 21, 1938, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan District Judge, appears the following entry, to wit:

Entered Dec. 15, 1938 nunc pro tunc as of Nov. 21, 1938.

324 District Court of the United States of America.

* * (Caption—16073) * *

ORDER OF AMENDMENT.

Before the Honorable Philip L. Sullivan, Judge of the Said District Court, This 21st day of November, A. D. 1938:

This cause coming on to be heard upon the motion of Plaintiffs and upon due notice to the Defendants, the said Defendants being present in open Court upon the signing and entry hereof and not objecting thereto;

It Is Hereby, Ordered, Adjudged And Decreed by the Court that the Bill of Complaint on file herein be and the same hereby is amended in the following particulars:

1. By dismissing "Josef Wagner, doing business as Wagner Dairy Products", as a party Plaintiff in said Bill of Complaint and in these proceedings;

2. By striking from said Bill of Complaint all of
325 Paragraphs 3, 16 and 22 thereof.

3. By striking out from said Bill of Complaint the words "Josef Wagner, doing business as Wagner Dairy

Products'' from the caption thereof and from the 3rd and 4th lines from the bottom of Page 1 thereof; by striking out the words ''and said Wagner Dairy Products'' appearing in Paragraph 17, on the 8th line of Page 10, and by striking out that portion of Paragraph 26, commencing on Line 5, Page 17, and ending on Line 10, Page 17, commencing with the words ''that said bottled milk, etc,'' and ending with the words ''members of the Plaintiff Union herein;'' by striking out the words ''or of Josef Wagner, trading as Wagner Dairy Products'' from Paragraph b appearing upon the 9th and 10th lines of Page 48''.

It Is Further Ordered, Adjudged And Decreed by the Court as follows:

A. That ''Josef Wagner, doing business as Wagner Dairy Products'' be and he hereby is granted the right to withdraw as a party Plaintiff herein.

B. That the amendment herein made to the Bill of Complaint herein be without prejudice to the order of reference to the Master in Chancery heretofore entered herein and without prejudice to the testimony introduced and proceedings had before said Master in Chancery.

C. That the Bill of Complaint herein as amended by this Order stand as Bill of Complaint of the remaining Plaintiffs herein.

D. That the Answer of the Defendants to the Bill of Complaint heretofore filed herein stand as the Answer of the Defendants to the Bill of Complaint as amended by this Order.

E. That the Report of the Master in Chancery heretofore filed herein stand as the Report of the Master in Chancery to the Bill of Complaint as amended by this Order, but subject however to the Exceptions of the parties filed thereto and to all other Exceptions, Objections or other proceedings had or taken with reference thereto.

F. That the entry of this order shall be without prejudice to the Exceptions of both the Plaintiff and of the
326 Defendants heretofore filed to the Master's Report heretofore filed herein and that such exceptions shall continue to stand as the exceptions of the remaining Plaintiffs and of the Defendants to the Master's Report upon the Bill of Complaint as herein amended.

Enter:

Philip L. Sullivan,
Judge.

327 And on, to wit, the 15th day of December, 1938, there was filed in the Clerk's office of said Court a certain Findings of Fact and Conclusions of Law, in words and figures following, to wit: Filed Dec. 15, 1938.

328 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—16073) * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The above entitled cause came on regularly for hearing in the above entitled Court, Honorable Philip L. Sullivan, Judge of the said court, presiding on the 30th day of November, A. D. 1938, on the Master's Report on application for injunction, the transcript of testimony taken before the Master and the exhibits offered and introduced in evidence as per the order of this court of May 23rd, 1938, and the parties hereto appearing and being represented by their respective counsel, and whereupon, the court having considered the Master's Report, the transcript of testimony taken before the Master including the exhibits offered and introduced in evidence, and having duly considered arguments of counsel, and being fully advised in the premises, now finds the following:

Findings of Fact.

First: On May 21st, 1938, Lake Valley Farm Products, Inc., a corporation, Amalgamated Dairy Workers' Local Industrial Union #819, a voluntary unincorporated association, Josef Wagner, doing business as Wagner Dairy Products, Lake View Co-operative of Watertown, Wisconsin, an agricultural co-operative corporation of the State of Wisconsin, as plaintiffs filed a Bill of Complaint against the Milk Wagon Drivers' Union of Chicago, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association, Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson, defendants. The cause was referred by or-
329 der of Court to Master Charles R. MacDonald, Master in Chancery on May 23rd, 1938, upon the Plaintiffs' application for a preliminary injunction. Various hearings were held before the Master, and evidence both oral and documentary was offered and introduced before the Mas-

ter. On August 8th, 1938, the Master's Report, including the stenographic transcript of testimony and exhibits, was filed in this Court. Both defendants and plaintiffs filed exceptions to this Report.

Second: On November 21st, 1938, plaintiff, Josef Wagner, doing business as Wagner Dairy Products, filed his motion to withdraw as party plaintiff and leave has been granted to said Josef Wagner to withdraw as party plaintiff.

Third: Plaintiff, Lake Valley Farm Products, Inc., an Illinois corporation, is engaged in the business of proceessing and distributing milk and dairy products in the City of Chicago, Illinois, that said plaintiff purchases its daily requirements of fluid milk from the plaintiff, Lakeview Co-operative of Watertown, Wisconsin; the said plaintiff receives its fluid milk from farmers resident in and citizens of the State of Wisconsin; that the said farmers deliver their milk to the country plant of said Lakeview Co-operative of Watertown, Wisconsin, where it is loaded on motor trucks and transported over the public highways from the State of Wisconsin to the plant or factory of the plaintiff, Lake Valley Farm Products, Inc., a corporation, located in the City of Chicago, County of Cook and State of Illinois; that after the receipt of milk at said plaintiff dairy it is pasteurized, and then bottled; that after being bottled the milk is distributed by the plaintiff dairy to various milk stores, grocery stores, delicatessens, food stores and other retail establishments where the said milk is sold at retail to various consumers; that said bottled milk is sold to various persons who own and operate automobile truck equipment, who pick up the said bottled milk and cream at the pasteurizing plant of the plaintiff dairy and thereafter distribute it to said various stores and that persons so operating such delivery truck equipment
330 are commonly referred to as "vendors"; that these individuals are not members of defendant union.

Fourth: Plaintiff, Amalgamated Dairy Workers Local Industrial Union #819 was organized on March 1st, 1938, and maintains executive offices in the City of Chicago, County of Cook and State of Illinois.

Fifth: Plaintiff, Lakeview Co-operative of Watertown, Wisconsin, is a co-operative organization of Wisconsin farmers having its principal place of business in Watertown, Wisconsin.

Sixth: The defendant union was organized in 1902 and since that time has unionized the majority of drivers de-

livering milk and other dairy products, having its headquarters in Chicago, Illinois.

Seventh: Plaintiff, Lake Valley Farm Products, Inc., is an Illinois Corporation. The members of Amalgamated Dairy Workers' Local Industrial Union #819 are residents and citizens of the State of Illinois. The Lakeview Co-operative of Watertown, Wisconsin, is a Wisconsin corporation. The defendant union and all of the individual defendants are residents and citizens of the State of Illinois.

Eighth: That approximately 40% of all of the milk sold in Chicago is produced in and shipped from states other than Illinois; that approximately 75% of all cream sold in Chicago is separated from milk produced in states other than Illinois; that foreign milk is commingled, sold in competition with, and is indistinguishable from milk produced in Illinois; that pastuerization requires only about one-half hour and nothing is added to or taken from the milk in such process; that only a few hours separate the receipt of the bottled milk at the retail store from it point of origin in the state of Wisconsin.

Ninth: The Plaintiff, Lake Valley Farm Products, Inc., is a cut-rate dairy in that it distributes its milk through retail stores at cash and carry sale at prices substantially less than the generally prevailing price for milk delivered by the dairy to the home.

Tenth: Because of the relatively large amount of milk delivered to each retail store by the plaintiff dairy, the
331 cost of delivery is substantially less than the cost of delivering milk on a retail route to the doorstep of the ultimate consumer.

Eleventh: That the growth of the cut-rate milk business in Chicago has been accompanied by violence to the distributing stores, and that stores selling plaintiff dairy's products, have had windows smashed, have been bombed, set afire, stench bombs thrown and have been submitted to other acts of violence; that cut rate dairy plants have been bombed and have had machinery smashed and subjected to other acts of violence; that delivery trucks of cut rate dairies have been kidnapped and destroyed, and other acts of violence committed.

Twelfth: That the picketing by the Defendant Union has all taken place at, and in front of stores selling the products of the plaintiff dairy and no picketing has taken place at the plaintiff dairy plant; that in some instances deliveries of other necessary food products into stores selling plaintiff dairy's products have ceased.

Thirteenth: That no labor dispute exists between plaintiff dairy and its workers.

Fourteenth: Fifteen to twenty stores distributing the products of plaintiff dairy were lost in the month preceding the filing of the present Bill of Complaint; twenty-five to thirty stores were similarly lost since the commencement of the action; that more than one hundred stores of plaintiff dairy have been picketed; that there is no way to ascertain the number of consumer patrons lost by the acts of the defendants.

Fifteenth: The Court adopts by reference the various findings of fact made herein by the Master in his Report.

Conclusions of Law.

From the foregoing facts, the Court concludes:

(1) That this court has no jurisdiction on the ground of diversity of citizenship.

(2) The Court finds that the actions of the defendants do not constitute a violation of the Sherman Anti-
332 Trust Law or the Clayton Act.

(3) The Court finds that the actions of the defendants do not burden or affect interstate commerce as prohibited by the Sherman Anti-Trust Law or the Clayton Act.

(4) The Court finds that the defendants actions do not constitute an unlawful conspiracy, as defined by the Sherman Anti-Trust Law or the Clayton Act.

(5) The Court finds that the defendants did not affect or attempt to affect an unlawful monopoly as defined by the Sherman Anti-Trust Law or the Clayton Act.

(6) The Court finds that the activities of the defendants do not constitute an unlawful secondary boycott to deprive plaintiffs of rights guaranteed to them under the Constitution and laws of the United States of America and of the State of Illinois.

(7) That a labor dispute exists as defined by the terms of the Norris-La Guardia Act.

(8) The Court further finds that it is without jurisdiction to grant the injunctive relief or any part of the relief prayed for by the plaintiffs.

(9) The Court finds that the plaintiffs are not entitled to any of the relief prayed for in the Bill of Complaint and that the equities in this cause are with the defendants.

(10) The Court finds that the plaintiffs are not entitled to a preliminary injunction as prayed for in their bill of complaint. The court further finds that the issues pre-

sented and the evidence offered on the application for the preliminary injunction are identical with any issues that might be made and any evidence that might be offered upon application for a permanent injunction, and that the evidence taken before the Master under the allegations of the Bill of Complaint disclose that this court would be without jurisdiction to entertain application for a permanent injunction, and that the equities on any application for permanent injunction would likewise be with the defendants.

(11) The Court therefore finds that the plaintiff
333 should take nothing by their said complaint and suit and the defendants should have a decree entered on the issues in their behalf and should have judgment for their costs to be fixed by the Clerk of this Court.

Enter:

Philip L. Sullivan,
Judge.

334 And afterwards, to wit, on the 15th day of December, 1938, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge, appears the following entry, to wit: Decree: Entered Dec. 15, 1938.

335 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—16073) * *

DECREE.

This Cause Coming on for hearing upon the Bill of Complaint filed by the plaintiffs, the answer filed by the defendants, the Master's Report upon application for temporary injunction, the transcript of testimony taken before the Master including exhibits offered and received in evidence, and the cause having been heretofore argued by counsel and findings of fact and conclusions of law having been heretofore made by this Court, the Court being fully advised in the premises, Orders, Adjudges and Decrees, as follows:

(1) That the suit of Josef Wagner, doing business as Wagner Dairy Products, one of the plaintiffs herein, be and the same is hereby dismissed with prejudice against

said plaintiff only against any further proceedings on the matters alleged in the Bill of Complaint against the defendants herein.

(2) That the exceptions of the plaintiffs to the report of Charles A. McDonald, Master in Chancery of This Court, upon the application for a preliminary injunction, be and the same are hereby overruled, and the application of the Plaintiffs for preliminary and permanent injunction be and the same hereby is denied.

(3) That the complaint of the remaining plaintiffs, namely, Lake Valley Farm Products, Inc., a corporation, Amalgamated Dairy Workers' Local Industrial, Union #819, a voluntary unincorporated association, Lakeview Co-Operative of Watertown, Wisconsin, an agricultural co-
operative corporation of the State of Wisconsin, be
336 and the same is hereby dismissed for want of juris-
diction.

(4) That the complaint of the remaining plaintiffs be and is hereby dismissed for want of equity.

(5) That the amount of the cost bond on appeal shall be in the sum of Two Thousand Five Hundred ($2500.00) Dollars, and that said bond shall also suspend execution for costs taxed in this Court upon its approval by this Court and filing with the Clerk of this Court.

Entered in Open Court This 15th day of December, A. D. 1938.

Philip L. Sullivan,
Judge.

Filed Dec. 23, 1938.

337 And on, to wit, the 23rd day of December, 1938, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Notice of Appeal, in words and figures following, to wit:

338 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—16073) * *

NOTICE OF APPEAL TO CIRCUIT COURT OF APPEALS.

Notice is hereby given that Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local, Industrial Union No. 819, Plaintiffs, above named, hereby

appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the Decree heretofore entered in this action on December 15, A. D. 1938, denying preliminary and Final Injunction and dismissing the Bill of Complaint and the said action.

Arthur R. Seelig,
Attorney for Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local, Industrial Union No. 819, Lake Valley Farm Products, Inc., a corporation, Appellants.

339 And on, to wit, the 23rd day of December, 1938, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain BOND ON APPEAL, in words and figures following, to wit: Filed Dec. 23, 1938.

340 Know All Men by These Presents:

That we, Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin, and Amalgamated Dairy Workers Local, Industrial Union No. 819, as principals, and Continental Casualty Company, as surety, are held and firmely bound unto Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert C. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson, in the full and just sum of Two Thousand Five Hundred ($2,500.00) Dollars, to be paid to the said Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert C. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards, and Joseph L. Patterson, their attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 23rd day of Decem-

ber in the year of our Lord one thousand nine hundred and thirty-eight.

Whereas, lately at a session of the District Court of the United States for the Northern District of Illinois, Eastern Division, in a suit pending in said Court, as Equity No. 16073, between Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local, Industrial Union No. 819, plaintiffs, and Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert C. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards, and Joseph L. Patterson, defendants, a decree was rendered against the said Lake Valley Farm Products, 341 Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local, Industrial Union No. 819, dismissing said suit, and the said Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local, Industrial Union No. 819, having filed their notice of an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, in the Clerk's Office of the said District Court to reverse the decree of the aforesaid, directed to the said Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson to be and appear at the United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Chicago within the time fixed by the Rules of Civil Procedure.

Now, the condition of the above obligation is such, that if the said Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin, and Amalgamated Dairy Workers Local, Industrial Union No. 819, shall prosecute their said appeal to effect, and shall answer all damages and costs that may be awarded against them, if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

This Bond shall also suspend execution for costs taxed in the said District Court of the United States upon the approval thereof by said Court and the filing of this Bond with the Clerk of said District Court of the United States for the Northern District of Illinois.

Lake Valley Farm Products, Inc., a corporation,
By: Siegfried Weiss,
President.

(Seal)

Attest:
Jos. T. Shotka,
Asst. Secretary.

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Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin,
By: John Mueller,
President.

Attest:
Thos. J. Darcey,
Secretary.

Amalgamated Dairy Workers Local, Industrial Union No. 819,
By: John Igoe,
Vice President.

(Seal)

Attest:
Cass R. Zalewski,
Secretary.

Continental Casualty Company,
By: J. F. Flaherty,
Atty-in-Fact. (Seal)

Sealed and Delivered
In Presence of:
James J. Wagner.
L. Clifford.

Approved by:
Philip L. Sullivan.

Entered Dec. 23, 1938.

343 And afterwards, to wit, on the 23rd day of December, 1938, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge, appears the following entry, to wit:

344 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—16073) * *

ORDER.

Before the Honorable Judge Philip L. Sullivan, Judge of the Said District Court of the United States:

On motion of Plaintiffs herein, it is Hereby Ordered, Adjudged and Decreed that the cost bond on Appeal of Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin, Amalgamated Dairy Workers Local Industrial Union No. 819, Plaintiffs, wherein said Plaintiffs are identified as principals and Continental Casualty Company, is identified as Surety, said Bond being in the amount of Two Thousand Five Hundred ($2,500.00) Dollars this day presented to the Court, be and the same hereby is approved.

It Is Further Ordered, Adjudged and Decreed that said Bond now so approved by this Court shall act as supersedeas and shall also suspend execution for costs taxed in this Court upon the filing thereof with the Clerk of this Court.

Entered in Open Court this 23rd day of December, A. D. 1938.

Philip L. Sullivan,
Judge.

345 And on, to wit, the 19th day of January, 1939, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Designation of Record, in words and figures following, to wit:

346 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Jan. 19, 1939.

• • (Caption—16073) • •

DESIGNATION OF RECORD.

The plaintiffs, Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local Industrial Union No. 819, by Arthur R. Seelig, their attorney, pursuant to Rule 75 of the Federal Rules of Civil Procedure, hereby designate the following portions of the record, proceedings and evidence, to be continued in the record on appeal, in the appeal herein taken by the plaintiffs from the decree entered herein in favor of the defendants on December 14, A. D. 1938, to the United States Circuit Court of Appeals for the Seventh Circuit:

1. Placita.
2. Bill of Complaint (including exhibits attached).
3. Order of Court entered May 23, 1938, that Plaintiff's motion for preliminary injunction be referred to Master in Chancery.
4. Answer of Defendants filed May 27, 1938.
5. Plaintiffs' motion to strike filed August 8, 1938.
6. Defendants' motion to strike filed August 8, 1938.
7. Narrative condensed statement of testimony offered before Charles A. McDonald, Master in Chancery.
8. Plaintiffs' exhibits numbers 1 and 4.
9. Defendants' exhibit number 3.
10. Report of Charles A. McDonald, Master in Chancery, filed August 10, 1938.

347 11. Plaintiffs' Exceptions to the Master's Report, filed on August 18, 1938, together with Exhibit A attached thereto, and excluding only that part commencing with paragraph "J" on Page 5 to and including paragraph "T" on Page 16; and that part commencing with paragraph "B" on page 17, to and including paragraph D on Page 20; and Exception "Eighth" commencing on Page 22 and ending at the bottom of page 23.

12. Order of Amendment entered December 15, 1938.
13. Findings of Fact and Conclusions of Law filed December 15, 1938.
14. Decree entered December 15, 1938.
15. Notice of Appeal filed December 23, 1938.
16. Appeal Bond, filed December 23, 1938.

17. Order approving Appeal Bond, entered December 23, 1938.
18. This Designation of Record and Notice and Proof of Service upon Appellees attached thereto.
19. Statement of Points Relied Upon.

Arthur R. Seelig,
Attorney for Plaintiffs (Appellants).

Notice.

To: David A. Riskind, and
Abraham Brussell,
Attorneys for Defendants (Appellants):

Please take notice that the above and foregoing "Designation of Record" has this day been filed with the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division.
January 19th, 1939.

Arthur R. Seelig,
Attorney for Plaintiffs (Appellants).

Service of a copy of the above and foregoing "Designation of Record," together with copy of "Narrative Condensed Statement of Testimony" and "Statement of Points Relied Upon" therein referred to, filed with the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division is hereby acknowledged this 19th day of January, A. D. 1939.

Abraham W. Brussell,
David Riskind,
Attorneys for Defendants (Appellees).

348 And on, to wit, the 19th day of January, 1939, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Statement of Points, in words and figures following, to wit:

349 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Jan. 19, 1939.
* * (Caption—16073) * *

STATEMENT OF POINTS.

The Plaintiffs, Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local Industrial Union No. 819, hereby state the following to be the points of error in the record and proceedings herein upon which the plaintiffs rely on appeal:

1. The Court erred in denying plaintiffs' prayer for preliminary injunction.
2. The Court erred in denying plaintiffs' prayer for final injunction.
3. The Court erred in following the findings of fact of the Master in Chancery to whom this cause had been referred.
4. The Court erred in following the conclusions of law of the Master in Chancery to whom this cause had been referred.
5. The Court erred in not sustaining the exceptions of the plaintiffs to the findings of fact of the Master in Chancery to whom this cause had been referred.
6. The Court erred in not sustaining the exceptions of the plaintiffs to the conclusions of law of the Master in Chancery to whom this cause had been referred.

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7. The Court erred in making the following conclusions of law:

a. That the acts of the defendants do not constitute a violation of the terms of the Sherman Anti-Trust law or the Clayton Act.

b. That the acts of the defendants do not burden or affect interstate commerce as prohibited by the Sherman Anti-Trust law or the Clayton Act.

c. That the actions of the Defendants do not constitute an unlawful conspiracy, as defined by the Sherman Anti-Trust law or the Clayton Act.

d. That the Defendants did not affect or attempt to affect an unlawful monopoly as defined by the Sherman Anti-Trust law or the Clayton Act.

e. That the activities of the Defendants do not constitute an unlawful secondary boycott to deprive plaintiffs

of rights guaranteed to them under the Constitution and Laws of the United States of America and of the State of Illinois.

f. That a labor dispute exists as defined by the terms of the Norris-La Guardia Act.

8. The Court erred in making the Decree entered December 15, 1938, dismissing the complaint for want of equity.

9. The Court erred in making the Decree entered December 15, 1938, dismissing the complaint for want of jurisdiction.

10. The Court erred in making its Decree dismissing the Complaint for the reason that by so doing the Court has deprived the plaintiffs of rights and protections secured to them under the Sherman Anti-Trust Law and the Clayton Act.

11. The Court erred in making its Decree dismissing the complaint for the reason that by so doing the Court has deprived the plaintiffs of their property without
351 due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

12. The Court erred in making its Decree dismissing the complaint for the reason that by so doing the Court has deprived the plaintiffs of their property without due process of law, in violation of Section 2, Article II, of the Constitution of the State of Illinois.

13. The Court erred in making its Decree dismissing the Complaint for the reason that by so doing the Court has denied to the plaintiffs herein, the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

14. The Court erred in making its conclusions of law, in that:

a. The same are inconsistent with the findings of fact made by the Court.

b. The same are contrary to law.

c. The same are contrary to the evidence.

d. The same are not sustained in any respect by the evidence.

e. The same are contrary to the manifest weight of the evidence.

15. The Court erred in dismissing the complaint and denying the plaintiffs prayer for the issuance of injunction restraining the defendants from committing acts of violence, picketing of stores or other places selling products of the plaintiff dairy, preventing delivery of other

commodities into such stores or other places, for the reason that:

a. The plaintiffs are thereby deprived of their property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

b. The plaintiffs are thereby deprived of their property without due process of law, in violation of Section 2, Article II, of the Constitution of the State of Illinois.

352 c. The plaintiffs are thereby deprived of the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

d. The same is contrary to the law.

e. The same is contrary to the evidence.

f. The same is not sustained in any respect by the evidence.

g. The same is contrary to the manifest weight of the evidence.

16. The Court erred in dismissing the complaint and denying to the plaintiffs relief by injunction against the acts of the defendants as an unlawful conspiracy and boycott carried out by means of violence, threats of violence, black listing, picketing of independently owned stores or other places selling the products of plaintiff dairy, and the stopping of delivery of other necessary food commodities into such stores or other places, for the reason that:

a. The plaintiffs are thereby deprived of rights and protections guaranteed to them by the Sherman Anti-Trust Law and the Clayton Act.

b. The plaintiffs are thereby deprived of their property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

c. The plaintiffs are thereby deprived of their property without due process of law, in violation of Section 2, Article II, of the Constitution of the State of Illinois.

d. The plaintiffs are thereby deprived of the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

e. The same is contrary to the law.

353 f. The same is contrary to the evidence.

g. The same is not sustained in any respect by the evidence.

h. The same is contrary to the manifest weight of the evidence.

17. The Court erred in dismissing the complaint and denying to the plaintiffs relief by injunction against the acts of the defendants as in violation of the terms of the Statutes of the United States known as the Sherman Anti-Trust Law and the Clayton Act, for the reason that:

a. The acts of the defendants burden and restrain interstate trade and commerce.

b. The acts of the defendants affect interstate commerce.

c. The acts of the defendants constitute a conspiracy in restraint of interstate trade.

d. The acts of the defendants constitute a combination in restraint of interstate trade and commerce.

e. The acts of the defendants tend to substantially lessen competition in the sale of milk.

f. The acts of the defendants tend to create a monopoly in the interstate trade and commerce of milk.

g. The defendants seek to control and regulate the price of milk in interstate commerce.

h. The acts of the defendants constitute an unlawful secondary boycott in restraint of interstate trade and commerce.

i. The plaintiffs are denied the remedy granted under section 16 of the Clayton Act.

354 j. The plaintiffs are thereby deprived of the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

k. The same is conrary to the law.

l. The same is contrary to the evidence.

m. The same is not sustained in any respect by the evidence.

n. The same is contrary to the manifest weight of the evidence.

18. The Court erred in taxing any costs against the plaintiffs,

Wherefore the plaintiffs say that upon all these errors, the Decree of dismissal of the District Court of the United States entered herein should be reversed or reversed and remanded.

Arthur R. Seelig,
Attorney for Plaintiffs.

355 And on, to wit, the 27th day of January, 1939, came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation, in words and figures following, to wit:

356 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—16073) * *

STIPULATION WITH RESPECT TO DESIGNATION OF TRANSCRIPT OF RECORD FOR USE ON APPEAL.

It Is Hereby Stipulated by and between the parties by their respective counsel that the time within which defendants (appellees) may file their designation of additional record for use in transcript of record to be filed on appeal in the above entitled cause in the Circuit Court of Appeals for the 7th Circuit may be extended up to and including Thursday, February 2nd, 1939.

It Is Further Stipulated that the Court may enter an order extending the time within which appellants may file their transcript of record on appeal in the Circuit Court of Appeals for the 7th Circuit up to and including February 18, 1939.

Arthur R. Seelig,
Attorneys for Plaintiffs (Appellants).
David A. Riskind & Abraham W. Brussell,
Attorneys for Defendants (Appellees).

357 And on, to wit, the 2nd day of February, 1939, came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation, in words and figures following, to wit:

358 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—16073) * *

STIPULATION WITH RESPECT TO DESIGNATION OF TRANSCRIPT OF RECORD FOR USE ON APPEAL.

It Is Hereby Stipulated by and between the parties by their respective counsel that the time within which defendants (Appellees) may file their designation of additional record for use in transcript of record to be filed on appeal in the above entitled cause in the Circuit Court

of Appeals for the 7th Circuit may be extended up to and including February 9, 1939.

It Is Further Stipulated that the Court may enter an order extending the time within which appellants may file their transcript of record on appeal in the Circuit Court of Appeals for the 7th Circuit up to and including February 23, 1939.

Arthur R. Seelig,
Attorneys for Plaintiffs (Appellants).
David A. Riskind & Abraham W. Brussell,
Attorneys for Defendants (Appellees).

Filed Feb. 9, 1939.

433 And on, to wit, the 9th day of February, 1939, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Designation for Additional Record, in words and figures following, to wit:

434 In the District Court of the United States.

* * (Caption—16073) * *

DESIGNATION OF ADDITIONAL RECORD.

The defendants, Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards, and Jospeh L. Patterson, by David A. Riskind and Abraham W. Brussell, their attorneys, pursuant to Rule 75 of the Rules of Procedure of this Court hereby designate the following Additional portions of the record, proceedings and evidence to be contained in the record on appeal to be added to the record previously designated by plaintiffs in this cause in the appeal taken to the United States Circuit Court of Appeals for the Seventh Circuit from the decree in favor of the defendants entered on December 14, A. D. 1938:

1. Amended condensed statement of testimony offered before Charles A. McDonald, Master in Chancery.
2. Plaintiffs' exhibits Nos. 2, 5 and 7, introduced in evidence before Master McDonald.
3. Defendants' exhibits Nos. 5, 6, 7, 8, 9 and 10 introduced before Master McDonald.

435 4. Defendants' exceptions to the Master's Report, filed August 26, 1938.

5. Designation of additional record and notice and Proof of Service upon plaintiffs (appellants).

6. Orders of Court of January 27 and February 2, 1939, extending time for the filing of Designation of Additional Record and the filing of the Transcript of Record on appeal in the Circuit Court of Appeals.

.....

.....

Attorneys for Defendants (Appellees).

Notice.

To: Arthur F. Seelig,
11 South LaSalle Street, Chicago
Attorney for Plaintiffs (Appellants):

Please Take Notice that the above and foregoing "Designation of Additional Record" and "Amended Condensed Statement of Testimony" have this day been filed with the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division.

David A. Riskind,
Abraham W. Brussell,
Attorneys for Defendants (Appellees).

Service of a copy of the above and foregoing "Designation of Additional Record," together with a copy of the "Amended Condensed Statement of Testimony" therein referred to is hereby acknowledged this 9th day of February, A. D. 1939.

Arthur R. Seelig,
Attorneys for Plaintiffs (Appellants).

436 And on, to wit, the 7th day of March, 1939, came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation, in words and figures following, to wit:

437 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—16073) * *

STIPULATION.

It Is Hereby Agreed And Stipulated by and between the parties hereto by their respective counsel that the Clerk of this Court in making up the transcript of record for use on the appeal to the United States Circuit Court of Appeals for the 7th Circuit, may and shall include the originals of all exhibits referred to in the designation of record previously filed herein both by plaintiffs (appellants) and defendants (appellees) in lieu of copies of said exhibits, said exhibits so referred to being plaintiffs' exhibits 1, 2, 5 and 7 and defendants' exhibits 3, 5, 6, 7, 8, 9, and 10.

It Is Further Agreed And Stipulated by and between the parties hereto that the Clerk in making up the transcript of record for appeal shall include therein the order of Judge Sullivan of February 23, 1939, extending time within which appellants may file their transcript of record on appeal up to and including March 15, 1939, and shall also include this stipulation and the order entered herein.

It Is Further Agreed and Stipulated by and between the parties hereto that the Court may enter any proper order on this stipulation.

Arthur R. Seelig,
Attorney for Plaintiffs (Appellants).
David A. Riskind & Abraham W. Brussel,
Attorney for Defendants (Appellees).

438 And afterwards, to wit, on the 7th day of March, 1939, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

439 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—16073) * *

ORDER.

On stipulation between the parties hereto, said stipulations being filed herewith.

It Is Hereby Ordered, Adjudged And Decreed that for the purpose of making up the transcript of record for use

on appeal, the Clerk of this Court may and shall include in such transcript the condensed statement of the evidence as filed by appellants hereto on January 19, 1939, with the express understanding that both of the parties hereto may at any time subsequently add to said condensed statement of testimony or modify said statement of testimony by filing any excerpts from the original transcript of the proceedings had before the Master either in question and answer form or in such form as each and both of the parties believe to be advisable, if for any reason it is necessary or advisable in the opinion of each or both of the parties to have such additional presentation before the Circuit Court of Appeals for the purposes of properly presenting and arguing the cause before said court.

It Is Further Ordered, Adjudged And Decreed that
440 the Clerk of this Court in making up the transcript of record for use on appeal to the United States Circuit Court of Appeals for the 7th Circuit, may and shall include the originals of all exhibits referred to in the designation of records previously filed herein, both by plaintiffs (appellants) and defendants (appellees) in lieu of copies of said exhibits, said exhibits so referred to being plaintiffs' exhibits 1, 2, 5 and 7 and defendants' exhibits 3, 5, 6, 7, 8, 9 and 10.

It Is Further Ordered, Adjudged And Decreed that the Clerk in making up the transcript of record for appeal shall include therein order of Judge Sullivan of February 23, 1939, extending time within which appellants may file their transcript of record on appeal up to and including March 15, 1939, and shall also include the stipulations filed herewith and this order entered herein.

Enter:

Barnes,
Judge.

Dated: March 7th, 1939.
Order O. K.
David A. Riskind &
Abraham W. Brussell,
Attys. for Defendants.
Arthur R. Seelig,
Atty. for Plaintiffs.

441 And on, to wit, the 23rd day of February, 1939, came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation, in words and figures following, to wit:

442 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—16073) * *

STIPULATION.

It Is Hereby Stipulated by and between the parties hereto by their respective Counsel that the time within which the Plaintiffs (Appellants) may file their transcript of record on appeal in the Circuit Court of Appeals of the United States for the Seventh Circuit be extended to and including March 15th, 1939.

Arthur R. Seelig,
Attorneys for Plaintiffs (Appellants).
David H. Riskind & Abraham Brussell,
Attorneys for Defendants (Appellees).

443 Northern District of Illinois, } ss.
Eastern Division. }

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Designations filed in this Court in the cause entitled Lake Valley Farm Products, Inc., a corporation, *vs.* Milk Wagon Drivers' Union, Local 753, et al., Equity No. 16073, as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 10th day of March, A. D. 1939.

Hoyt King,
Clerk.

(Seal)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS. Filed Mar. 16, 1939.

For the Seventh Circuit.

Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local, Industrial Union No. 819,

Plaintiffs (Appellants),

vs.

Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert C. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards, and Joseph L. Patterson,

Defendants (Appellees).

No. 6900.

STIPULATION WITH RESPECT TO OMISSION OF CERTAIN PORTIONS FROM PRINTED RECORD.

It is hereby stipulated by and between the parties, by their respective counsel that for the purpose of avoiding needless repetition and the incurring of needless expense to the parties hereto, that the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, in causing the record of the above entitled cause to be printed, is hereby requested and authorized to omit from the said printed record the following portions of the original transcript of record:

1. Omit commencing with Paragraph 10, on Page 129 to Article VII on line 2, on Page 132.

2. Omit commencing with "Rule 3,—Vacancies" on Page 137, up to "Part G—Membership Meeting" on Page 139.

3. Omit all of Defendants' Exhibit 5, commencing on Page 184, except both sides of Pages 184, 185 and 186 and the first paragraph on Page 187 thereof.

4. Omit entire Pages 140 and 141.

5. Omit all of Defendants' Exhibit 7, commencing on Page 230, except only the heading and first paragraph appearing on Page 230; Section 41, appearing on Page 230; Section 42 appearing on Page 231; sub-paragraphs K and L appearing on Page 232; sub-paragraph N, appearing on the reverse side of Page 232.

6. Omit all of Defendants' exhibit 9, excepting only the title (including the name of Court, number of case, names of parties); Paragraphs 5 and 6, on Pages 244 and 245; Paragraph 8 on Page 246 to the end of the first Paragraph on Page 247; Paragraph 11, on Page 249; Paragraph 15 on Pages 253 and 254; Paragraph 16, on Page 254 to the end of the first paragraph on Page 255; Paragraph 18, on Page 257 to the end of Paragraph 18, on Page 258; Paragraph 20, on Page 260 to the top of Page 261; Paragraph 21, on Page 261, to the end of the first paragraph on Page 262; Paragraph 22 on Pages 262 and 263; Paragraphs 24, 25 and 26, commencing with Page 263 and ending at the middle of Page 265; prayers for relief on Pages 267 and 268.

7. Omit entire Page 277 (Certificate).

8. Omit from Plaintiffs' Exceptions, commencing with Paragraph J, Page 283, to and including Paragraph T, Page 294; commencing with Paragraph B, Page 295, to and including Paragraph D, Page 298; entire exception 8, on Pages 300 and 301.

Arthur R. Seelig,
Attorney for Appellants.

David A. Riskind & Abraham W. Brussell,
Attorneys for Appellees.

Endorsed: In the United States Circuit Court of Appears * * (Caption—6900) * * Stipulation With Respect to Omission of Certain Portions from Printed Record. Filed Mar 16 1939 Frederick G. Campbell, Clerk.

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 6900

LAKE VALLEY FARM PRODUCTS, INC., A CORPORATION; LAKE VIEW COOPERATIVE OF WATERTOWN, WISCONSIN, ETC., ET AL.,

Plaintiffs-Appellants,

vs.

MILK WAGON DRIVERS' UNION, LOCAL 753, ET AL.,

Defendants-Appellees.

Counsel for Plaintiffs-Appellants:
MR. ARTHUR R. SEELIG.

Counsel for Defendants-Appellees:
MR. DAVID A. RISKIND,
MR. ABRAHAM W. BRUSSELL.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

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1 HARRY ENTIN:

Direct Examination by Mr. Seelig.

Mr. Seelig: Q. Did you observe the pickets when they were in front of your store?

A. I did.

Q. Did you see the pickets talk to anyone?

A. Very little. • • •

Mr. Seelig: Q. Will you answer that, Mr. Entin?

A. The violence? My windows were broken three times on different occasions.

Q. On what dates did that happen?

A. It happened once four years ago, and then about four months later, and two years ago last July. • • •

Mr. Seelig: Q. Will you explain the circumstances of the removal of that sign, please?

A. I ordered milk from a different dairy, and they said I should take the sign out before they will carry in the other milk and take out—

Mr. Riskind: I ask that that be stricken, if the Master please.

The Master: He has not finished his answer. • • •

Cross-Examination by Mr. Riskind.

Q. When did you first secure that sign bearing the Amalgamated Union label on it?

A. Between fifteen and twenty days from now.

Q. And will you tell the Court just how you managed to get that sign, and from whom?

A. The Wagner driver brought it in and gave it to us.

Q. Well, now, just tell us the conversation that you had with that Wagner driver when he brought that sign in.

A. The only conversation I had is to put that in the window and show the people that it was union milk by a different union delivered.

2 Q. Is that the only conversation you say you had with him?

A. Yes, sir. • • •

MAE SITKO:

Direct Examination by Mr. Seelig.

Mr. Seelig: Q. Now, will you state what, if anything, occurred on May 3, 1938?

A. Why, two men came in the store; in fact, they were out there just before I opened, and came in and said they represented the Milk Wagon Drivers Union, and they wanted me to put in union milk or they would picket me. I said they should go next door, there was a Meadowmoor Store there, and they were welling milk cheaper than I was, and they said he would take care of himself, and they said, "Well, if you don't intend to do it, we will picket you, and we are going to ruin you."

Q. Was anything else said at that time?

A. Well, he made a few slight remarks. He said, "You will either put in union milk, or we are going to ruin your business." That is the way he put it. * * *

A. To begin with, they are walking in front of our windows and he has at the bottom of this sign two little pieces of wood and it is only about eighteen feet wide, and when he gets to the end of each window—it is only fifteen feet wide, bang, that little piece of wood goes into the window and makes a track on the window, and marches back again, and I went out there one day and said, "Now, listen, Mister, you stay back away from the window, or I will take a broom to you". Of course, he didn't listen to me, but I may have been aggravated, too, and was— * * *

Q. Do you display a sign indicating that your milk comes from a union dairy?

A. I have that C. I. O. sign, and I took it out this morning.

Q. But you had been displaying it?

A. Yes, sir, I had it right on the window.

Q. And it could be clearly seen by anyone walking on the widewalk?

A. Yes, sir.

Q. And will you state the circumstances of your removing that sign this morning?

A. Well, we washed the windows, and the windows are not decorated yet, to go up, and I had to leave it there.

Mr. Seelig: I will withdraw that question.

Mr. Riskind: No, I think it ought to go in.

The Witness: That sign is going right back up again.

* * *

Recross Examination by Mr. Riskind.

Q. What time do you open your store?
A. Well, I used to open it around seven o'clock, but since the pickets are there, we do not open before eight.
* * *

MAUDE CADDLE:

Direct Examination by Mr. Seelig.

Mr. Seelig: Q. Will you continue on, and say what was said and done, please?
A. I had a card in the window from—I think it said the Amalgamated Union. I just do not remember exactly about that, and he came in and took out that card and he asked me to give it to him, and I told him I could not possibly do so. That is the card right there.
(Indicating.) That is the card there.
Mr. Seelig: For the purpose of the record, will you identify this as plaintiff's exhibit number 1?
The Witness: A. So, he went out and came back in, and he said, "I do not mean to offend you, but I will pay you something for that card, if you will let me have it. I would like to take it to our president". Well, I said
"Why, I would not let you have it, no matter what
4 you gave me. That is my own protection to have it in my window".
Q. Was there anything said further at that time?
A. No, sir.
Mr. Carmell: I move to strike that out as being immaterial, no connection.
Mr. Seelig: I think it has a very important connection.
The Master: How do you know it was a representative of the Bowman Dairy?
A. Because he told me so, and he wanted to sell me milk, and have me take the milk over instead of the one we were using.
Mr. Seelig: That is all. * * *

JOSEPH L. BAZIK:

Direct Examination by Mr. Seelig.

Q. And you sell dairy goods, do you not?
A. That is right.
Q. Of what dairy?
A. Lake View Dairy.
Q. You refer to the Lake Valley Farm Products, being one of the plaintiffs in this case?
Mr. Riskind: I object to that, and move it be stricken.
The Master: It is leading in form.
Mr. Riskind: May I have that stricken?
The Master: I will sustain the objection.
Mr. Seelig: Q. Well, when you say "Lake View" what do you mean by that? What is the more precise name, do you know, of that company?
A. Well, their cap reads "Lake Valley", but I always called them "Lake View". I don't know, I just— * * *
Q. All right.
A. Well, for one week, I had both of them in there, that is Bowman and Lake View, and one morning, a couple of men walked in. They claimed they were from the Milk Wagon Drivers' Union, and they told me that unless I discontinued the Lake View Milk, that they would be forced to picket my store.

* * * * *

Q. You know who Mr. O'Connor is?
A. No, I don't know Mr. O'Connor.
Q. Do you know the position he has with the Milk Drivers' Union?
A. I believe he stated that he was the business agent. He came out and we talked it over and I told him that the business—the business at my particular store and in my particular locality was such that I had to have cut rate milk in order to keep my doors open. I was willing to keep a union dairy, Bowman or anybody he could name, but I would have to have cut rate milk along with it. We talked on for about a half an hour or better and finally he left and said, "Well, do what you think is best" and so I called the Bowman Dairy Company on that same day and told them they should come and leave milk in the morning, for Saturday morning, and they didn't leave it and I called them again at noon, and the men came out from the dairy—

Mr. Carmell: Just a moment. I object to any conversation with the dairy.

The Master: Yes, unless it was in the presence of the pickets or somebody there.

The Witness: A. Well, Mr. O'Cononr called off the pickets Friday afternoon, he called them off and that was all I heard from them, and I called the dairy and they wouldn't deliver, and I didn't pay any attention to it at all, and Sunday night my windows were smashed.

* * * * * *

Q. During the time that you had these pickets in front of your store what, if any, effect did they have on the amount of milk sold?

Mr. Riskind: The same objection.

The Witness: A. It didn't have any effect on it.

6 Mr. Riskind: Oh, all right.

The Witness: A. I didn't sell any more and I didn't sell any less.

* * * * *

CARLA FISCHER:

Direct Examination by Mr. Seelig.

Q. And from whom do you purchase the milk and dairy products that you sell in that store?

A. Up to about a week ago I purchased from the Lakeview.

Mr. Riskind: Just one second. May I ask that that be stricken—the Lakeview is not the Lake Valley as far as we know.

Mr. Seelig: Off the record—

Mr. Riskind: Just one second. As far as the complainant is concerned, we have been told it was the Lake Valley, there has been no mention in this complaint as to the Lakeview, and any mention of the Lakeview Dairy is immaterial in this case and I think it should be stricken from this record.

The Master: I think the other witness testified that it was also known—

Mr. Seelig: This dairy succeeded the Lakeview and they still operate under both names.

Mr. Riskind: They are not made a party plaintiff in this case, Lakeview, and I move it be stricken.

Mr. Seelig: They are not actually the plaintiff. They

are not actually a party to this proceeding excepting they have succeeded to the other dairy and still use some of the milk bottles of the Lakeview. These people have gotten in the habit of referring to them as the Lakeview. I myself make that error sometimes. We will have competent testimony later on as to that.

* * * * *

Mr. Seelig: Q. What if anything happened at that
7 time in connection with your changing from the Lake Valley Dairy to any other Dairy?

A. Well, we had our windows broken in one night.

Q. What if anything else happened?

Mr. Riskind: Now, for the purpose of this record, where they state that windows were broken, usually in these conspiracy cases we try to shorten them up by asking that a blanket objection be made to this type of evidence and say it be understood now we don't—any time a window was broken we are making a blanket objection on the ground there is no connection between any of the parties.

The Master: All right, it may be understood.

* * * * *

Q. Do you desire to continue to purchase milk from the Lake Valley Dairy?

A. I would have.

Q. At present you are buying milk from what dairy?

A. Turner.

Q. During the time you were selling milk of the Lake Valley Dairy you were selling milk at cut-rate prices, were you not?

A. Correct.

Q. And at what prices are you selling milk at this time?

A. The same price, eight and a half cents.

* * * * *

Cross-Examination by Mr. Riskind.

Q. What do you sell your milk for at the present time?

A. Eight and a half cents.

Q. The Turner Dairy's?

A. Yes, sir.

Q. That is a Union dairy, isn't it?

A. Yes, sir.

Mr. Seelig: I object to that.

Mr. Riskind: Q. Do you know if it is a union dairy belonging to 753?

8 A. That is why I took it.

Q. And what time do you open your store for business?

A. Six-thirty in the morning.

Q. And at the time the Wagner's dairy man delivered your milk, what time did you open it?

A. The same time.

Q. The same time, six-thirty. And when do you get your milk supplies from the Turner dairy?

A. Well, I get it at various times, sometimes he comes at nine-thirty and ten and today he was there late and came eleven-thirty.

Q. What time did the Wagner dairy man deliver your milk? I mean Lakeview. When I say "Wagner" I mean Lakeview. What time did the Lakeview man deliver your milk?

A. He used to come always at eight.

Q. Eight o'clock in the morning? Never before eight?

A. It probably was before but very seldom after.

Q. Then he did come sometimes before that time?

A. Yes, sir.

* * * * * *

Q. Oh, I see. Now, at the time you took dairy supplies from the Lake Valley Company, did you or did you not know whether that man belonged to any union labor organization?

A. I did know he did not.

Q. That he did not belong to it. Did that make any difference to you?

A. At the time it didn't. I didn't think it was important.

Q. When you received the sign, this placard, from whom did you receive it, the yellow sign?

A. I received it from my driver.

Q. That was the driver deliverying the dairy supplies from the Lake Valley Dairy Company, is that correct?

A. Yes.

Q. Did you have a conversation with him at that time?

9 A. Well, all he said was—

Q. Yes or no, did you talk to him?

A. Yes, sir.

Q. What did he say to you and what did you say to him?

A. All he said was they belong to a union now and we should put the sign in our window so people could see it.

Q. Did you have any pickets in front of your store at any time?

A. No.

* * * * * *

JOSEPH SPRY:

Direct Examination by Mr. Seelig.

Q. Are there any other milk stores competing with your business in that block?

A. There is a meadowmoor at 51—

Q. And they take quite a bit of your business away, do they?

Mr. Seelig: I object to that.

Mr. Riskind: Q. Do you or don't you know whether they take business away from you?

A. I don't know that.

Q. You don't know that?

A. No, sir.

* * * * * *

Q. I noticed you called the dairy the Lakeview at first and then the Lake Valley. Now, who told you the name was changed from Lakeview to Lake Valley Dairy?

A. The bottle is marked Lakeview, but the case is marked Lake Valley.

* * * * * *

Q. From whom did you get it?

A. The milk driver.

Q. From whom?

A. Frank—

Q. He is a Lake Valley Driver?

A. Yes, sir.

Q. When was that?

A. That was about a week ago, I got that card.

Q. Did you have a conversation with him about the Card?

A. He just said, "Put that in the window. We belong to the Union now."

Q. Did he tell you which union he belonged to?

A. Well, you can see by that.

Q. Did he tell you or didn't he?

A. No, sir.

Q. Did you ask him any questions about it? Did you ask him why the union had been formed?

A. No, sir.
Q. Did you ask him any questions about it? Did you as him why the union had been formed?
A. No, sir.
Q. You didn't care anything about it?
A. I didn't.
Q. You didn't pay any attention to it?
A. No, sir.

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JOSEPH P. MOORHATCH:

Direct Examination by Mr. Seelig.

Q. Yes, the night you referred to a moment ago when you said pickets were there one morning until the next night?
Mr. Carmell: No, he said they were there until the next morning.
Mr. Seelig: Next morning. Pardon me, I thought you said the next night.
The Witness: A. Well, I thought it best to carry on and keep my doors open and sell union milk.
Mr. Seelig: Q. Did any persons at any time visit you concerning the type of milk you were selling?
A. Yes.
Q. Will you state the date of that visit and who the parties were and what took place at that time?
11 A. I was actively negotiating with Bowman's and other concerns because it was just recently that I reorganized my business so these people were seeing me at the time and Western-United had been there before and so they would drop in on me now and then, naturally, trying to get the business.
Q. At any time did any representative of the Western-United Dairy talk to you concerning the removal of goods from the Wagner Dairy?
Mr. Riskind: Objection to Counsel's leading the witness, if the Court please.
The Master: He may answer.
Mr. Carmell: And in any event, any acts by the Western-United wouldn't be binding upon the defendants.
Mr. Seelig: It is a member union—if it is a member of the union I thing it would.
Mr. Riskind: The Western-United Dairy is not.
The Master: He may answer.

The Witness: A. Yes. Yes, they had been trying to get that stop continuously.

Mr. Seelig: Q. What, if anything, took place concerning the Western-United drivers and yourself in connection with your discontinuing buying from Wagner and taking from Western-United at that time, that morning?

A. Well, it was decided and the milk was exchanged and I kept on—I got my supplies later and continued business as usual and I am still—

* * * * * *

Mr. Seelig: Q. What amount did they pay you?

A. Fifteen dollars.

Q. Did any conversation take place between yourself and those drivers that gave you that money at the time they gave it to you?

A. The conversation was to—well, it was for business losses, and it was for the stop, and I tried my uttermost to actively negotiate with Mr. Wagner, but—I don't care
12 to answer any more questions.

* * * * * *

Mr. Seelig: Q. At this time you do not desire to purchase milk from the Wagner Dairy, do you?

Mr. Carmell: I object to that question.

The Master: He may answer yes or no.

Mr. Seelig: Q. Answer that question yes or no, Mr. Witness, if you can.

A. Well, naturally I would, because it helps business.

Q. Then why do you not purchase milk from the Wagner Dairy Company at this time, if you desire to?

A. I am under obligations. I have made an oral statement, and I don't feel justified in backing out.

Q. The statement you refer to is the statement made to the Western United drivers?

A. Yes, and the compensation received.

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GENEVIEVE ST. PIERRE:

Direct Examination by Mr. Seelig.

Q. What, if anything, has happened recently concerning the sale of milk in your store?

A. Well, I don't know.

Q. Has anyone visited your store recently concerning the sale of milk by the store?

A. No, that was just one driver that come in and says they are going to picket the store, and he told me to change milk—

Q. And do you know the Driver's name?

A. No, I couldn't tell you the driver's name.

Q. And what did he say to you?

A. He just told me that I should change milk men, because our milk men aren't in the union.

Q. And what else did he say?

A. He said they are just going to picket the store if I didn't change, so I told him he couldn't talk to me about that, and he went.

13 Q. Did that man make any reference to this sign that you display in your window?

A. No. Oh, yes, he just told me to take that sign out, he says, because they are not in the union.

Q. Was any reference made to the price at which you were selling milk?

A. No.

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MARGARET BALIKA:

Direct Examination by Mr. Seelig.

The Witness: A. Well, two men came in the store and asked me to take the sign off, and I should sell the milk just like they do, at eleven and a half—ten and a half cents. So I did take the sign off, because I didn't want anything should happen, but—

Mr. Riskind: We cannot allow that in the record.

Mr. Seelig: Q. Did they say anything further to you?

Mr. Riskind: Just one second. I am making an objection.

The Master: She took the sign off. All after that goes out.

Mr. Seelig: Q. Did they say anything further to you, Mrs. Balika?

A. Not anything very much, but they told me if I don't do as they ask, they are going to have a picket in front of the store, but so far, they didn't have.

Q. And you removed the signs, is that right?

A. The signs, I did.

Mr. Riskind: But not this card?

Mr. Seelig: Q. You are still displaying this card?

A. Yes, sir.

Mr. Seelig: That is all.

Cross Examination by Mr. Riskind.

Q. Who gave you that sign, Mrs. Balika? The yellow sign.

14 A. Mr. Kozel.

Q. Is that the milkman?

A. Yes, sir.

Q. What dairy did you take from?

A. The Lakeview.

* * * * * *

Q. And the man that gave it to you was a milk driver, isn't that so?

A. Yes.

Q. Did you talk to that man when he gave you that sign?

A. Yes.

Q. And what did you say to him and what did he say to you? Did he tell you why he gave you that sign?

A. Well, he told me about that sign, and then he gave me the sign, I should put that on my window.

Q. Did he tell you why you should put that on the window?

A. He told me that was a union sign.

Q. Didn't he tell you at that time that the only reason you should put that sign on the window was that they wanted to put the Milk Wagon Drivers Union out of business?

A. Yes.

Mr. Riskind: That is all.

Re-Direct Examination by Mr. Seelig.

Q. In addition to telling you that, did he tell you anything further that he wanted you to do?

A. No.

Q. And you are certain that he said exactly what this attorney asked you, is that correct?

Mr. Carmell: We object to that. This is cross examining his own witness.

Mr. Seelig: All right.

Mr. Riskind: That is all.

15 SIGFRIED WEISS:

Direct Examination by Mr. Seelig.

Q. Just a moment please. I think it would be a little easier for the Master if you turned your chair so you would be about this way.

A. All right. They have their own trucks. They buy the milk at wholesale at our plant, pay cash for it, and then they go out and distribute to the stores. The stores usually take at the average of eight to ten cases. We have also about twenty-five men that have retail where they take out milk and deliver from door step to door step.

Q. And all of these men that you have referred to as vendors, they own their own delivery equipment, do they not?

A. They do.

Q. You do not pay them a salary, do you?

A. No, sir.

Q. They are not on your pay roll?

A. No, sir.

Q. You do not consider them employees, do you?

A. No, sir.

Q. You have no control over them, have you?

A. No, sir.

Q. As to the manner of distribution?

A. No, sir.

Q. At what time of the day do these vendors pick up the milk from your dairy?

A. From five to eight o'clock.

Q. In the morning?

A. In the morning.

Q. And—

A. I should say four-thirty to seven-thirty.

Q. And do these vendors return then later in the day?

A. They return from eleven to two o'clock.

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Q. Approximately how many cases of milk does a wholesale vendor of your dairy distribute each day?

16 A. They distribute from seventy-five to a hundred and fifty cases.

Q. And how many hours are required in distributing that number of cases?

Mr. Riskind: Seventy-five to a hundred?

The Witness: A. Three and a half to five hours.

Mr. Riskind: Seventy-five to a hundred cases?
The Witness: A hundred and fifty.

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Q. But their route is actually distributed each day, is it not?
A. It is seven days distributed.
Q. How do they distribute on the seventh day?
A. They have their own helpers and they have the helper make the route one or two days a week.
Q. Do any vendors work less than six days a week?
A. Surely. Some of them work three or four days when the helper makes the whole route.
Q. And these helpers, in most instances, are what types of persons?
A. They are young fellows—
Mr. Riskind: I do not think he ought to testify to that. Objection to that question, if the Master please.
Mr. Seelig: I withdraw it.
Q. Will you explain to the Court the manner in which the helpers distribute on these routes?
A. They are young men. They are just out of school—but we will say eighteen, nineteen years.
Q. What compensation do these helpers get?
A. They are glad to get three or four dollars a day.
Mr. Riskind: Q. They are glad to get three or four dollars a day?
A. Yes.
Mr. Seelig: Q. And what amount do they actually receive?
A. We do not know.

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Mr. Seelig: Q. In your opinion, what amount is so sold through cut rate stores?
17 A. Forty percent.
Mr. Riskind: Forty percent of the milk in Chicago sold through cut rate stores?
A. Forty percent, yes.

* * * * * * *

Q. So that the generally prevailing price of cut rate milk in the City of Chicago is what price for one quart?
A. It is nine and a half cents, cut rates, the average.
Q. So that one quart would actually cost ten cents?
Q. Your dairy does not own any of these stores, do they?
A. No, sir.
Q. You are not interested in any of these stores in any way, are you?

A. No, sir.
Q. Except in that they distribute your products?
A. That is correct.

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The Witness: A. It is five years we observed these things in these five years. It is a continuous trouble for all these milk stores and our dairy.

Mr. Seelig: Q. What has been the experience of your dairy during that time, during the past five years?
A. The Lake Valley Dairy, we was bombed twice.
Q. What were the dates of those bombings?
A. We was bombed in June 1935, and also September, 1935. Lake View Dairy, that is part of our dairy, was bombed in 1934.

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Mr. Seelig: Q. Continue as to any other statements you may have to make concerning your plant?
A. Our trucks were dumped in the river. They were burned.
Q. When did this occur?
A. This occurred in 1934. Our drivers were kidnapped, taken out to Lincoln Park, trucks taken away from them. He had to walk home.

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18 Q. Have you observed any of these occurrences to other independent dairies, cut rate dairies?
A. Yes.
Q. What have you observed during that period?
A. Edgewater Dairy was bombed.
Q. And when did that occur?
A. It occurred also in 1934.
Mr. Riskind: Now, I think this man is going far afield.

• • • • • •

Q. And are any of your stores being picketed—or any of your stores been picketed during the past thirty days?
A. Yes, sir.
Q. Approximately, if you know, what number of stores have been picketed during the past thirty days?
A. There are quite a number.
Q. In what manner have these stores been picketed with reference now to the length of time they have been picketed, or the like?
A. Some of them are picketed—

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Q. Have you observed this picketing at any specific locations?

A. Yes, I have.

Q. Have you observed the effect of this picketing as to the quantity of milk that is sold—

Mr. Riskind: I object, if the Master please.

Mr. Seelig: Let me finish my question.

Q. —that is sold at the store that is being picketed?

Mr. Riskind: Two reasons. Too general.

Mr. Seelig: I think it is extremely competent.

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Mr. Seelig: Q. Do you know the name of the owner of that store?

A. He has a very hard name to say.

Q. A long Polish name?

A. Yes.

Q. You could determine that party's name, couldn't you?

A. I think so.

19 Q. Have you observed, and do you know the effect of picketing on any other one of your stores?

A. Generally all the same, that they lose business.

* * * * * * *

Q. The members of the Milk Wagon Drivers' Union, Local 753, are employed by whom?

A. They are employed by the so-called—up to now, they was always called union dairies.

Q. Could you name some of those dairies?

A. Bowman, Borden, Wanzer, Western-United.

Q. Now—

Mr. Riskind: Let him go ahead. There are about a hundred and fifteen of them. Don't name five large ones now. Do not try to cut him off.

Mr. Seelig: Q. Some of these diaries are very large and some are smaller dairies?

A. Right.

Q. And the dairies that employ members of the Milk Wagon Drivers' Union, Local 753, distribute a smaller or a larger portion of the milk in the City of Chicago?

A. They have the larger portion of it.

Q. Aside from the milk that is distributed by the so-called cut rate dairies, many of which you have mentioned; I mean, milk in the City of Chicago, practically all is distributed through these dairies that you have just referred to, is that correct?

A. Yes.

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Mr. Seelig: I will stipulate for the record that there are more than five diaries employing your men.

Mr. Riskind: There are about a hundred and fifteen dairies employing them.

Mr. Seelig: I do not know the exact amount. I do not care to stipulate to something I am not absolutely familiar with.

Mr. Riskind: All right.

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20 THOMAS J. DARCEY:

Direct Examination by Mr. Seelig.

Q. Approximately what amount of milk in pounds do you ship into the Chicago market daily?

A. It varies.

Q. What is the minimum amount?

A. It runs from some—as orders come in from these dairies. It may run over from the other day, but whatever the dairies order. Some days we ship as high as sixty to seventy thousand. If on another day some thing happens—

Mr. Riskind: Sixty to seventy thousand pounds in a day?

Mr. Seelig: In a day.

The Witness: And another day we may run down to twenty-five or thirty. It all depends on your call for milk.

Mr. Seelig: Q. Mr. Darcey, do you ship to any other dairies besides the Lake Valley Dairy?

A. We have a regular tank that comes to the Lawndale every day.

Q. Do you, at any time, sell to other dairies?

A. We sell to other dairies. The Ogden. The Farmers' Dairy. We have sold Wagner and quite a few of the other dairies in the city.

Q. And you ship regularly to the Lake Valley Dairy, that is one of the plaintiffs in this case?

A. The Lake Valley, yes.

Q. Is that correct?

A. Yes, that is correct.

Q. And is the milk that is shipped to the Lake Val-

ley Dairy distinguished in any way from the milk that you might sell to any other dairy?

A. No.

Q. Does the plant at Watertown separate any milk into cream?

A. We separate the surplus milk. Some times of the year there is no surplus. Other times, when what you call the flush is on, we separate it and ship it.

Q. Has your Watertown plant separated any milk during the Last year?

A. Yes, we have separated milk.

Q. And have you shipped any cream from that separated milk to the Lake Valley Dairy?

21 A. Oh, yes, we ship that to the Lake Valley Dairy.

Q. And that cream is separated from milk that is received from these same farmers that you have talked of before?

A. The same farmers.

Q. And the milk, when it is received, is physically undistinguishable from the milk that goes into fluid milk, is that correct?

A. Received for cream purposes?

Q. Yes?

A. It is one and the same article.

Q. Your dairy plant at Watertown, Wisconsin, ships every day into the Chicago market, does it not?

A. Every day.

* * * * * *

Q. What proportion of your milk, for fluid milk purposes have been sent to the Lake Valley Farm Products during the past several months?

A. Approximately half of the supply, over half of the supply.

Mr. Riskind: That is the last few months?

The Witness: That is the last few months.

Mr. Seelig: Q. Of the remaining half, does part of that go to Chicago, to dairies selling cut rate milk?

A. To the Lawndale, which I understand is a cut rate dairy.

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JOHN E. IGOE:

Direct Examination by Mr. Seelig.

Q. What is approximately, or what is your average net income, after deduction of all expenses from the conduct of your route?

A. Approximately sixty dollars a week.

Q. How many days each week do you work, Mr. Igoe?

A. Some times four, five, six.

Q. Do you have any assistance on that route?

A. Yes, I have a helper.

Q. And does that helper work on the same days you work?

A. No, he gets off two days a week, or a day a week.

22 Q. What is the name of your helper?

A. I can't remember his last name. I know it is a Polish name.

* * * * * * *

Q. I asked you to state the nature of your union with particular reference as to the type of people that are applicable for membership in the union?

A. Well, we take in all the dairy workers, including the inside help, the office work, the drivers, the sweeper, the janitor, and all of those dairy workers that are not organized; we take them all in.

Q. And you are organized, then, along lines known as industrial lines, is that correct?

A. That is correct.

Q. Rather than along lines known as craft lines?

A. That is correct.

Q. You do not only take into your union, milk wagon drivers, do you?

A. No, we take in everybody connected with the milk industry.

Q. Do you know of your own knowledge whether or not the workers and vendors distributing the milk of the Lake Valley Dairy and the Wagner Dairy products are members of your union?

A. Yes, I do.

Q. Are they members?

A. They are.

Q. Have you in your union, as members, persons dis-

tributing milk of any other dairies in the City of Chicago?

A. Yes, we have members of the Edgewater Dairy.

Q. When was the plaintiff union organized?

A. Approximately two months ago; I should say the last part of March, it started.

Q. Who were the original members of your union, or who organized the union?

A. Well, there was myself and Mr. Kost and Mr. Zalewski, and my brother, Mr. Joe Igoe.

Q. Approximately how many members has your union at this time?

A. I should say about one hundred thirty members. There is new ones coming in every day.

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Mr. Seelig: Q. What, if anything has been done or is being done concerning the matters of wages, hours, terms, and conditions of employment?

23 A. Well, we propose to get up certain agreements and then if they don't pass, we propose to go before arbitration.

Q. Mr. Igoe, what are the purposes of your union?

A. Well, they are to better the conditions of the working people; that is, the drivers and the inside workers of these different dairies that we are organizing.

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Mr. Seelig: Q. What is the average earnings at this time of the vendors distributing milk of the Lake Valley Dairy?

Mr. Riskind: I object to that. I think the books and records of the concern would be the best evidence.

Mr. Seelig: The books and records would not show that, because they are independent contractors.

The Master: He may answer.

The Witness: A. I should say $50.00 a week.

Mr. Seelig: Q. Are you referring to retail or wholesale?

A. Referring to wholesale.

Mr. Riskind: How much did you say?

The Witness: Approximately $50.00 a week or better.

Mr. Seelig: Q. And what is the average earning of helpers on any of these wholesale vendors' routes?

A. That I do not know.

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Q. Do you know how many days a week the vendors at these two dairies work?

A. Well, some of them work six days, some work five days. It all depends.

Q. Do any work more than six days?

A. No.

Q. And on the seventh day of each week who distributes the milk on these wholesale vendors' routes?

A. In the dairy where I work they have an extra man who takes routes on their odd day.

Q. And all this extra man does it takes routes on the seventh day?

A. He takes out a relief route, yes.

Q. You have observed vendors at your dairies and other dairies as to the time they take out their load in the morning and the time they return with the empty truck, have you?

Mr. Riskind: May I interrupt? I want to clarify it so we won't have to call him back. The seventh man, is he a vendor also, the man who takes the extra day? Is he a vendor?

Mr. Seelig: Q. Will you state the nature of the employment or business of the seventh man you just referred to?

A. Well, like in our dairy, they have several house trucks, what they call.

Q. Yes?

A. That they have drivers working for the dairy.

Mr. Riskind: All right.

The Witness: And they have a man relieving those routes, and he relieves our routes at the same time.

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JESSE ELMER WILSON:

Cross-Examination by Mr. Riskind.

Q. What is your name again? What is your full name?

A. Jesse Elmer Wilson.

Q. You have seen me before, haven't you, Mr. Wilson?

A. I have, yes, sir.

Q. You saw me in the courtroom of Judge Oscar Caplan, did you not?

A. Yes, sir.

Q. Where you have filed a complaint against these two men, isn't that right. Segal and Wald?

A. Yes, sir.

Q. Isn't it a fact that at the time you told the judge a story entirely different from the one you tell me about now?

A. I told the same story.

Q. Is it a fact that the police—

A. As far as it went—

Q. As far as it went?

A. As far as it went, excepting the last part of it that happened since that.

Q. Insofar as the violence that occurred that day in your store. Now, Mr. Wilson, isn't it a fact that we also called at that time the policeman to whom you had told your story at that time?

A. I don't remember.

Q. Weren't those two policemen in court that day?

A. I do not remember.

Q. Did you see any one of the policemen to whom you had told your story on that day?

A. I don't know that—

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A. And they said the lawyers—they said the big lawyers of the milk wagon Drivers' Union was too big and so the police would not make that warrant out.

Q. Who said that?

A. That was the desk sergeant.

Q. What was his name?

A. I don't know his name, but it was the desk sergeant.

Q. You are sure you don't know the desk sergeant's name?

A. No.

Q. Isn't it a fact that he appeared in court the day you appeared in court?

A. I don't remember whether he did.

Q. And isn't it a fact that Judge Caplan called you a prevaricator from the bench and said you had been lying?

A. I don't remember.

Q. You do not remember him saying anything like that?

A. I don't remember.

Q. Isn't it a fact that you said at that time that one of the men had used a gun?

A. One of the men had a gun in his pocket and he did.

Q. Did have a gun, and isn't it a fact you told the sergeant he did not have that gun?

A. No, I did not tell the sergeant any such thing, no, sir.

Q. But you don't remember anything like that?

A. No, sir.

* * * * * *

Q. Did he tell you that the purpose was to destroy the milk wagon drivers' union, local number 753?

A. He did not.

Q. Did he say anything about the purpose of this sign?

A. He did not.

26 Q. Did he tell you where he wanted it put?

A. He said I could put it in my store window.

Q. Did he tell you what purpose it was for?

A. No, sir, he didn't say that either. He said they belonged to the union now and to put a union card in the window.

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SIGFRIED WEISS:

Cross-Examination by Mr. Riskind.

Q. Have you any extra men that take the place of the vendors on the seventh day?

A. No, not now.

Q. No extra men at all?

A. Not now, we used to have.

Q. Answer my question. Have you had drivers employed by you?

A. It was about a year and a half back.

Q. A year and a half—since that time you have had no drivers of any kind?

A. No, sir.

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The Master: Are you unionized? I thought you testified you were.

A. They are unionized, yes, sir, but at the present time there is no wage scale made out. We had 60 days where they worked this price situation out.

Mr. Riskind: Q. You have no wage scale for the men employed at your dairy at the present time?

A. We have—

Q. At the present time you have no wage scale, have you?

A. No, we have no wage scale; we have our own wage scale.

Q. You have your own wage scale?

A. Yes, sir.

Q. What is your wage scale?

A. It is—the average is about $33 to $35 a week.

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Q. Have you an association of any kind to get together—for the cut-rate dairies to get together?

Mr. Seelig: I object to that. I would like my witness to answer that question, that one question and I
27 would like to object to any further questions along that line. The question is whether you have an association to determine price.

Mr. Riskind: Q. Answer that. The question was, do you have an association of any kind in regard to these dairies?

A. Yes, we have an organization, yes.

Q. What is the purpose of that organization?

Mr. Seelig: I object to that now. It is entirely improper. This can go afield indefinitely.

Mr. Riskind: Now, if the Master please—

The Master: Just a minute, let us reason it out. You are asking for affirmative relief in a Court of Equity. Now, it is elementary they must come in with clean hands.

Mr. Seelig: Correct, and I am perfectly willing to have this man talk indefinitely on the subject of what effect the association with this organization may have on the price, but I don't feel in a general way—I have no objection in the matter of price at all. I just made the observation in a general way that they can go far afield.

Mr. Riskind: I don't care what you wish. I just want the Master to rule on your objection.

Mr. Seelig: I have no objection.

The Master: Q. Answer the last question of you can, please.

A. Well, we have just an organization there to talk things over between ourselves. Now, for instance, we didn't have a meeting for I guess four or five weeks. Sometimes we have no meetings for two or three months. We talk together once in a while, talk things over about the milk business, about our farmers, about the situation in general. We have a little luncheon—that is all we have there.

Q. You never talk about prices among yourselves?
A. We don't talk about prices, no.
Q. It never has been mentioned at that association of yours at all, has it?
A. Well, we don't talk about prices. That has no bearing at all—
Q. I asked you a question—if prices ever have been mentioned at your association meetings?
A. That we are going to set the price or what?
28 Q. I asked you if price, in any way, has been mentioned.
A. We talk about price of milk, price of cream from our farmers and talk about everything while we are together. We are in the same business line, so we talk things over.
Q. At those meetings, have you ever discussed with Mr. Wagner anything—have you ever talked with Mr. Wagner at those association meetings?
A. I talked with Mr. Wagner, certainly.
Q. And isn't it a fact, at that time, at those various meetings, in your talk to Mr. Wagner, you say you would have your stores sell for eight and a half cents and he has his stores sell for eight and a half cents?
A. No, that was never mentioned.
Q. That is never mentioned?
A. No, we don't talk about price or what he should charge or what I should charge or what the stores should charge. We don't know about that.
Q. And yet your base price is eight and a half cents a quart, isn't that so?
A. No, we have a price there most of our milk is sold at nine and a half cents.
Q. Let me ask you—
Mr. Seelig: Let that appear in the record.
The Master: Certainly, don't interrupt him.
Mr. Riskind: Q. Does any of your milk sell for less than eight and a half cents a quart in the stores?
A. I don't know.
Q. You don't know whether your milk sells for less than eight and a half cents at your stores?
A. I don't know, because they run their stores—they are served by our vendors, by our men. We don't know. We see some stores but we don't see all of the stores.

* * * * *

Q. Now, isn't it a fact that your dairy, through Mr. Kizer and through yourself, paid Mr. Kost two hundred

dollars to go to Washington to try and secure a union charter.

A. I don't know.

Q. You do not know?

A. The dairy didn't pay.

29 Q. Do you know whether Mr. Kizer paid that two hundred dollars?

A. I don't know.

Q. Now, who keeps the books in your concern, who is your bookkeeper?

A. Joe Lhotka.

Q. And what is his address, if you know?

A. It is Berwyn. 25 something Gunderson Avenue, Berwyn.

Q. Now, your help, do you pay them in checks or in currency?

A. In checks.

Q. How much milk did you process January 27, 1938?

A. What time?

Q. How much milk did you process in January of 1938?

A. About $1,200,000 pounds.

Q. That is on January 27, 1938?

A. Oh, for one day? Well, I wouldn't know. I would have to look up the books. I can say for a month.

Q. All right, for the month it is how much?

A. Approximately $1,200,000 pounds.

Q. And in December of 1937, how much did you process?

A. About the same.

Q. And in September of 1937, how much did you process?

Mr. Seelig: Oh, I will object to this.

The Master: Objection sustained.

Mr. Seelig: The volume of business has nothing to do with it.

Mr. Riskind: If the Court please, let me show you why it is so important. They state that there is a violation of Interstate Commerce, that we are restraining Interstate Commerce. Now, if there is a restriction—and I hestitate to say that in front of this witness, because he may so outline his answers—but if we are violating or restraining Interstate Commerce, there should be a diminution of that supply.

Mr. Seelig: The answer is so obvious and so apparent to that, it is ridiculous. These men, through three thousand stores, are selling the same quantity of milk they sold

through four hundred originally. That is the answer to it, and you know that as well as I.

Mr. Riskind: I have a right to prove that there is no diminution of that supply, that the same amount is being sold.

The Master: Ask the question, whether there has been or not.

Mr. Riskind: Q. Has there been any diminution?

A. I didn't get that thing right.

Q. Well, I think I had better ask it the other way. If the Court please, I want to show that through the months they have not done so. I have a right to ask that.

Now, you stated that there was no diminution in January of 1938 and December of 1937. Now, in September of 1937, was the same amount of milk sold by your concern?

A. We get new customers day by day. I don't—

Q. Is that contained in your books?

A. Yes.

Q. Your books and records contain that? All right.

A. We will show that.

Q. Is that summarized in your books?

A. It is summarized, yes. You can see how much milk we used.

Q. Now, have you a contract to purchase milk from that Watertown dairy?

Mr. Seelig: I will object to that.

The Master: He may answer yes or no.

The Witness: A. No.

* * * * *

The Witness: He wants to know if they are employed by the dairy?

Mr. Riskind: Q. Yes, that is all I want to know.

A. Now that is not so easy to say, if they are employed or not. We have contracts, and they are bound to our dairy. They are actually employed by our dairy, but we have the vendor system, where they own their own trucks and they pay their own expenses and they buy milk at a certain price at our dairy. In one way they are employees, and in another way, we don't pay wages. We have to pay whatever they can make over a certain price. We charge them a certain price.

Q. Then you do so that in some ways you regard them as your employees?

Mr. Seelig: Oh, that is purely a legal conclusion.

The Master: He has answered that.

Mr. Riskind: Q. But there are no wages paid to
31 these men, none of the men driving wagons are paid wages?

A. No, sir.

Q. And you did mention the fact that you have contracts with these vendors?

A. That is correct.

Q. Are these contracts written or oral?

A. Written contracts.

Q. With each Vendor?

A. Yes.

Mr. Riskind: Q. Now, you stated that the vendors made between an average of fifty and seventy-five dollars net per week?

A. Yes, sir.

Q. Now, you did state on my former questions that you did not know they have paid to helpers, did you not?

A. I don't know.

Q. How do you arrive at the figure of fifty dollars net per week?

A. At the amount of milk they take out and the profit that is made on it.

Q. Well, do you deduct from the profits the fact that they pay their helpers?

A. Well—

Q. You don't know how much they pay to helpers, do you?

A. I don't know, no.

Q. So you cannot arrive at a net figure, can you?

A. Well, I can still, even if I give them union wages.

Q. How did you arrive at your figures?

A. I say that the average is twelve hundred quarts of milk there. He takes a cent and a half a quart. Now, you figure it out.

* * * * *

A. Well, I know, but that is not in there. I did the work myself, so I know they don't need no helpers. If they want to make it easy for themselves and have a boy helping them, that is their own thing. They make $88.00 or $90.00 a week there. What they do with that money, we don't know. They don't need no helper to deliver a hundred cases of milk.

Q. Now, did you figure out what each vendor pays for his truck?

A. When I say three dollars a day, that includes everything.

Q. Depreciation on the truck?

A. Depreciation, yes, sir.

32 Q. Gasoline?

A. Gasoline.

Q. His original expenditure on that truck?

A. Yes.

Q. But you don't figure helpers?

A. No, not on these. I don't allow anything for helpers, no, sir.

Q. And that is a seven day week that you are figuring, is it not?

A. That is correct.

Q. And not a six day week?

A. All right, that is $88.00. If they have a man there extra for one day, well, it takes that much off. They still have—how much is that a day? $88.00, that is twelve and a half dollars a day for that extra day to pay somebody to take their routes on that day.

Q. That would cut them down to $76.00?

A. That would cut it down to $76.00.

Q. And if they paid a helper forty-eight dollars a week, the union—

A. Mr. Riskind, I just mentioned they don't need no helper. If they have one, well, that is—

Q. I say if they pay their helper forty-eight dollars a week, they would then be making under the union scale, isn't that correct?

A. But they don't need a helper.

* * * * *

Q. Now, supposing that a vendor has dairy products which he has not sold for the day and returns to the plant with some of those products, as a matter of fact, does that ever happen, Mr. Weiss?

A. That happens.

Q. What happens to those products?

A. They are made into buttermilk or butter.

Q. Just one second. Do you take that back?

A. Yes, we do.

Q. Do you give him credit for that?

A. Yes, we do.

* * * * *

Mr. Riskind: Q. Any money at all? Now, you stated on direct, Mr. Witness, that a great deal of violence took

place in 1934 and 1935 against your stores and against some of your vendors, isn't that so?

33 A. Yes.

Q. Did you go to any police station, did you make any complaints to the public officials?

A. We did.

Q. In 1934. Let us get it down to 1934. Did you? Just 1934, Mr. Weiss, did you or did you not?

A. In behalf of the Lake View Dairy, yes, we did.

Q. To whom did you make those complaints in 1934?

A. The State's Attorney's Office.

Q. To whom did you speak there, if you remember?

A. Oh, I don't remember the name now. Captain Eagan, I guess.

Q. Who?

A. Or Lieutenant Tracy.

Q. You made complaints to Lieutenant Eagan and Captain Tracy in 1934, you made complaints to them, and did they do anything for you then?

* * * * *

The Master: Q. Do you know what was done after a complaint was made?

A. No, I don't know. I didn't hear anything from it no more.

Mr. Riskind: Q. Did you sign any warrants against anybody at that time, or anybody from your dairy sign any warrant against anybody in 1934?

A. No.

Q. Now, in 1935, did you make any complaints to any public officials or police officers?

A. Yes, sir.

Q. To whom did you make those complaints?

A. Also to Captain Tracy.

Q. And to Lieutenant Eagan?

A. I think so.

Q. Did you make the complaints personally?

A. I made some of them.

Q. To Lieutenant Eagan of the State's Attorney's office?

A. We called them up to send Captain Tracy or Lieutenant Eagan out to investigate.

Q. In 1938? Do you know of your own knowledge whether anything was done for you?

34 A. No, I don't know.

Q. Now, in 1936, did you make any such complaints to any public officials?

A. Yes, our dairy did, and some stores did when there was violence and picketing.

Q. Just one second. I say, did your dairy? You say you are not interested in any of the stores. Now, I say, did your dairy itself make any complaints to any public officials in 1936?

A. Well, our dairy made some on behalf of some stores.

Q. You tell me that you are not interested in the stores, isn't that so?

A. But we are interested to sell milk there.

Q. But the dairy did not, on behalf of themselves, they did not make any complaints?

A. Yes, they did, too.

Q. To whom? And who made those complaints?

A. I know 7301 Vincennes—

Q. I say, did the dairy itself, on behalf of itself, and who made those complaints? I am not talking about the stores, and that question is very simple.

Mr. Sellig: May I interrupt. When you say or behalf of itself, what do you mean? I don't think the witness understands the question correctly.

The Master: Do you understand the question, Mr. Witness?

Mr. Sellig: Do you understand what he means when he says on behalf of itself?

Mr. Riskind: I think he understands pretty well.

Mr. Seelig: You mean of violence to the dairy, is that what you mean?

Mr. Riskind: Yes.

The Witness: Well, there wasn't any.

Mr. Riskind: Q. There wasn't any violence to the dairy in 1936 at all, is that correct?

A. No.

Q. No violence. Was there any violence to the vendors, not to the stores, in 1936? You can look at Mr. Seelig, but the best thing to do is just answer.

35 Mr. Seelig: I don't know. I can't tell.

The Witness: A. I don't know. It is two years ago. I am trying to recall some incidents I don't recall right now.

Mr. Riskind: Q. But you did state that violence occurred in 1934 and 1935, you remember that very well, do you not?

Mr. Seelig: To the stores, he said.

Mr. Riskind: Now, Mr. Seelig, let the witness answer the question.

The Master: The record speaks for itself.

Mr. Riskind: Q. You don't remember whether any violence occurred to the vendors in 1936?

A. I don't recall.

Q. Now, in 1937, did any violence occur to your dairy?

A. No.

Q. Or to your vendors? Don't you remember?

A. I don't recall, no.

Q. If anything drastic had happened to your dairy, or to the vendors, you probably would remember, wouldn't you, Mr. Weiss?

A. I think so.

Q. But you don't remember that. Now, in 1938, did anything occur to your dairy itself, any violence of any kind?

A. No.

* * * * * *

A. Trucks got stopped, all right.

Q. What?

A. Trucks got stopped.

Q. Did you make a complaint to the public officials?

A. No.

Q. You made no complaints. You just ignored that, didn't you? Did you see an attorney in 1936, 1937, or 1938 to seek some redress for you?

Mr. Seelig: I will object to that.

The Master: Objection sustained.

Mr. Riskind: That is all.

Redirect Examination by Mr. Seelig.

Q. And the Capitol Dairy at that time employed members of the defendant union, that is, the Milk Wagon Drivers' Union?

A. 753.

36 Q. Do you remember what the wage scale was for milk wagon drivers at that time?

A. I think it was $37.50, if I am right, something like that.

Q. And you worked on a route?

A. I helped along.

Q. What amount of pay did you receive as a helper at that time?

A. Fifty cents a day.

Mr. Riskind: When was that?

The Witness: That was in 1928.

Mr. Riskind: 1928?

The Witness: 1929, maybe.

Mr. Seelig: Q. Mr. Weiss, you are familiar with distribution on retail routes employing members of the Defendant Union, are you not?

A. I am.

Q. What is the present wage scale of the Defendant Union for milk wagon drivers?

A. $47.50, is it?

Mr. Riskind: $48.00 and commission.

Mr. Seelig: Q. Now, if a driver on one of these retail routes were to sell the milk at less than twelve cents a quart, would that have any effect on the amount of money he would actually receive at the end of the week?

A. Yes, sir.

Q. Do you know whether or not the practice prevails at this time of selling a substantial proportion of the milk sold on the Defendant Union routes at less than twelve cents a quart?

A. It is.

Q. Is that a substantial amount of the milk that is sold?

A. I think it is quite a number of bottles they sell, each driver sells, for below the set price of twelve cents,

Q. So that, actually, a driver so selling, would receive materially less than $48.00 a week, would he not?

A. Yes, sir.

* * * * * *

Recross Examination by Mr. Riskind.

Q. You say that you know of your own knowledge that milk is sold by members of the union on their routes for less than twelve cents. From whom did you get that
37 knowledge?

A. I got it from customers I seen and talked with.

Q. And from whom did you find out that when a milkman belonging to 753 sells his milk for less than twelve cents, that his wages are deducted in that amount? From whom did you find that out?

A. From customers of mine.

Q. The customers told you that the milkmen's wages were being deducted by the dairy, is that so?

A. So did the milkmen.

Q. Which milkmen did you talk to?

A. Oh, I talked to—

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The evidence has been received as to that being deducted, from various customers outside of the presence of the defendants, and it should be stricken.

Mr. Seelig: It is a very well known fact among dairy men. It is part of what every dairy man knows.

Mr. Riskind: Is that in the record, Mr. Seelig?

Mr. Seelig: A witness has no way of knowing exactly what amount of milk comes in from Wisconsin, either. All of these things are a matter of general knowledge.

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JOHN IGOE:

Cross-Examination by Mr. Riskind.

Q. Now, do you know Mr. Kizer?

A. Yes, I know Mr. Kizer.

Q. Where and when was the first time that you met Mr. Kizer?

A. Oh, in 1935, I guess, was the first time.

Q. Had you had occasion to see him just before the charter of this organization was issued by the C. I. O.?

A. Well, I see him there during different frequent times.

Q. Have you ever talked to him about this organization?

A. Well, sure, I have talked to him.

Q. Now, isn't it a fact that you were present when Mr. Kizer gave Mr. Kost the sum of Two Hundred Dollars to go to Washington?

38 A. No, that is not true.

Q. He never did?

A. He never did.

Q. You are sure that he never did?

A. I am sure.

Q. If he did so, you would know about it, is that so?

A. I presume I would know about it.

Q. Were you present when Mr. Kizer talked to Mr. Kost about this organization?

A. Well, sure.

Q. Was Mr. Seelig ever present at that conference?

A. No.

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Q. When you say that you are not eligible to be a member of 753, what do you mean by that?

A. Well, I am a vendor. I buy milk from the dairy and then I go out and sell it to my stores.

Q. So that you think of yourself as an independent owner, is that right, an independent contractor?

A. That is, I am just a milk vendor.

Q. You are just a milk wagon driver, is that what you mean?

A. I am a milk vendor, I said, not a driver.

Q. Well, how do you differentiate between the members of our union and yours? Will you tell us what the difference is?

A. Well, as far as man to man, I don't know if there is any difference.

Q. You do the same type of work, do you not?

A. Only we deliver wholesale and they deliver retail.

Q. But of your own knowledge, you know that we have wholesale drivers belonging to 753, do you not?

A. That is right.

* * * * * *

The Master: Q. Do you know of any other difference except what you have stated?

A. No, I don't know of any other difference.

* * * * * *

Q. And you stated that the Blue Ribbon hired a
39 man, an employee of their own to take the route on the seventh day, is that so?

A. Yes, they have a man there in case I didn't want to work my route, he would take it.

Q. And the dairy pays him for that seventh day, or you pay?

A. I have to pay him.

* * * * * *

Q. You are sure that on these bottles you sustain no loss at all?

A. If I break a bottle on the truck and it is a broken bottle, I take it into the dairy—

* * * * * *

Q. Now, how much did you pay for your truck?

A. My truck cost me about a thousand dollars.

Q. And what do you figure depreciation at?

A. A dollar a day.

Q. Now, have you any compensation insurance for the man that is employed by you as a helper?

A. No, I haven't.

Q. You have no compensation at all?
A. No, I haven't.
Q. What about your peddler's license, who pays for that?
A. I pay for it.

* * * * * *

Q. Who works that seventh day if you don't?
A. A man from the dairy.
Q. I am sorry, I will have to take this all over again. You did say that you worked six days and your helper worked six days, then on the seventh day the dairy supplied you with a man?
A. I didn't say that I worked six days and the helper worked six days.
Q. What did you say?
A. I said that the helper works six days.
Q. And do you work seven? Answer the question. Do you ever work seven days?
A. No I don't work seven.
Q. Who takes care of the route on that seventh day?
40 A. The helper.
Q. Do you pay him for that seventh day?
A. He works six days and I take the route on the seventh day.
Q. Oh, he takes a day off and you take a day off, is that what you mean?
A. That is right.

* * * * * *

Q. Isn't it a fact, Mr. Igoe, that so far all the dues have been paid by the Wagner and the Lake Valley Dairies themselves to date, that the men haven't paid any dues themselves so far whatsoever? Isn't that a fact, Mr. Igoe?

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Mr. Riskind: Q. I mean Nick Kost; and that was on Clybourn Avenue?
A. No, Claremont.
Q. What is the address?
A. 3513 Claremont.
Q. That is Kost?
A. That is Nick Kost.
Q. And what is the address of Mr. Kizer?
A. 3513 Claremont.
Q. The same address exactly, isn't that so?
A. That is correct.

Q. Who is the owner of that building, Mr. Kizer, if you know?

A. I don't know.

Q. You don't know that. So that it is true that the vice president of the Lake Valley Dairy Company and the president of the union live in the same building, isn't that so?

A. That is true. I don't know what office he holds in Lake Valley. I don't know what office Joe Kizer holds.

Q. Now, I don't remember, I want to get this clear, Mr. Witness. You stated that Mr. Wagner employed milk wagon drivers, not as vendors, but as employees, isn't that so?

A. I think he employs some drivers. I don't know if they are all drivers.

Q. Are any of those men members of your union?

41 A. Yes, they are.

Q. So that those drivers who are eligible to membership in 753 are members of your organization today?

Mr. Riskind: Q. But you are also taking these drivers who are being paid wages by the Wagner Dairy Company, isn't that so?

A. No, we are taking all the independents.

Q. No, I asked one question, that is very easy to answer. I said, those men that are being paid wages by the Wagner Dairy Corporation and are employees of the Wagner Dairies, they are not considered vendors, are they?

A. No, I don't think they are.

Q. Yet they are members of your organization, are they not?

A. That is right.

Q. So that you are not only taking vendors into your organization, but you are taking in milk drivers employed by a dairy, isn't that so?

A. If they are milk drivers, we take them in, sure.

Q. Now, are you acquainted, of your own knowledge, with the wages that Mr. Wagner is paying those employees?

A. No, I am not.

FRANK WAGNER:

Direct Examination by Mr. Seelig.

Q. Was anything further done concerning that incident, your joining the union?
A. Nothing further has been done.
Q. Did you join the union?
A. I gave them ten dollars. I never paid any dues. I never got a button from them. I never got a thing—
Q. Did they ever later follow that up with efforts to make you join the union?
A. They did not.
Q. Have they at any time asked any of your workers to join their union?
A. They have not.
Q. Have they ever visited your plant and talked with your workers concerning joining?
42 A. They have not.

* * * * * *

Cross-Examination by Mr. Riskind.

Q. Have you any dairy drivers?
A. Dairy drivers?
Q. Yes, employed by you that deliver milk?
A. Yes.
Q. How many have you of those?
A. We have ten.
Q. And how many days a week do these ten men work?
A. Six days a week.
Q. Never seven?
A. No, sir.
Q. Who takes the wagons out, their wagons or trucks, out on the seventh day?
A. We have an extra man in the dairy.
Q. One extra man?
A. Two extra men.
Q. How many days do those two extra men work?
A. They work six days a week, also.
Q. Six days a week?
A. Yes, sir.
Q. What time of day do they start working?
A. They start working five o'clock in the morning.

Q. When do they quit?
A. They quit around ten o'clock, eleven o'clock.
Q. The same morning?
A. Same morning.
Q. Never later?
A. Never later.
Q. How much do you pay these men?
Mr. Seelig: Which men?
Mr. Riskind: Q. These dairy drivers?
A. We pay these dairy drivers the average—we have helpers—the drivers get—
Mr. Riskind: I withdraw that question.
Q. What is the lowest wage you pay any of these milk wagon drivers employed by you?
43 A. Twenty dollars per week.
Q. And what is the highest?
A. The highest is thirty-five dollars per week.
Q. You pay none of your men driving milk wagons the sum of forty-eight dollars and commission, do you?
A. No, sir.
Q. Are you acquainted with the present union scale of wages of those members in 753, Mr. Wagner?
A. I am.
Q. You know, of course, that that is forty-eight Dollars a week and commission? Do you or don't you?
A. I do.
Q. Now, have your men any helpers on their trucks?
A. They have.
Q. About how many helpers are employed on those trucks?
A. There is a helper on each truck.
Q. And are those helpers employed by you and paid by you?
A. Yes, sir.
Q. How much do you pay these helpers? What is the lowest you pay these helpers?
A. Eighteen dollars per week.
Q. That is the lowest?
A. Yes, sir.
Q. How many days a week do these helpers work?
A. Six days a week?
Q. And what is the highest that you pay?
A. Thirty-five dollars.
Q. These helpers also?
A. No, the helpers get—
Q. I am talking about the helpers.

A. The helpers get from eighteen to twenty-three dollars per week.

Q. And they only work six days a week?

A. That is right.

Q. How many hours do the helpers put in?

A. Same. They start at five and are through at ten and eleven o'clock.

Q. How many helpers did you say you had working for you?

44 A. Helpers, we have seven helpers.

Q. Now, do you pay these men in checks or in cash?

A. In cash.

Q. You never pay them in checks?

A. No, sir.

Q. Why?

A. Well, that is our ruling at our office. If the men got checks, we have to cash them for them, so we decided we would pay them in cash.

Q. In cash?

A. That is right.

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Mr. Riskind: Q. Does that "Employees" include milk wagon drivers paid by your concern?

A. Yes, sir, that is an employee.

Q. Would you call those employees, those milk wagon drivers that are paid by you, vendors or milk wagon drivers?

A. I would call them milk wagon drivers.

Q. And are they also in this Local 819?

A. Yes, sir.

Q. And those men are the men that receive the lower wage than the men that belong to 753, is that right?

A. Well, of course, if you put it—

Mr. Seelig: I object to that.

Mr. Riskind: If you know.

The Master: If he knows, he may answer.

The Witness: They do not receive a smaller wage for the hours they work.

Mr. Riskind: Q. Do they work less hours, is that it?

A. They do, yes.

* * * * * *

Q. I said would you be willing to pay your drivers the sum of forty-eight dollars a week and commission too?

A. Yes.

Q. If you were offered a union contract from 753?

A. Yes.
Q. You are sure you would?
A. Yes.
Q. And would you be willing to abide by the rules
45 as to hours conditions of labor as stated in the union contract 753?
Mr. Seelig: I object to that.
Mr. Riskind: He has a right to answer yes or no.
The Master: He may answer.
The Witness: A. We cannot abide by their rules and regulations, because their rules in the by-laws, they have no helpers on the truck which we have helpers.
Mr. Riskind: Q. I say the hours. Would you abide by the hours?
A. Yes, sir.

* * * * * *

Mr. Riskind: Q. How many cut rate dairies did you say there are in Chicago?
A. Right off hand there is a number of cut rate.
Q. How many?
A. I would have to really go into that and count them. I would say there is probably twenty-five or thirty. Probably more than that.
Q. Do any of those cut rate dairies employ members of 753?
A. Do they employ?
Q. Yes?
A. I do not think they do.
Q. Are you acquainted with the Wrightwood Dairy?
A. Yes, sir.
Q. Do they sell cut rate milk?
A. Not that I know of.
Q. Are you acquainted with the Boyda Dairy?
A. Yes, I am.
Q. Do they sell cut rate milk?
A. I do not know whether they do.
Q. You do not think they do either? Are you acquainted with the Turner Dairy?
A. I am.
Q. Do they sell cut rate milk?
A. Yes.
Q. Are these dairy's employees members of 753?
A. The Turner Dairy don't belong to them as I understand.
46 Q. All those dairies that I have mentioned are members of 753?

Mr. Seelig: I object. He testified they did not.
Mr. Riskind: No, he did not.
The Master: He may answer.
Mr. Riskind: Q. Do you know whether these dairies I have enumerated here are members belonging to 753?
A. I know the Boyda Dairy does belong to your local. I do not know personally about Wrightwood and I recently heard that Turner Dairy signed up.
Q. What about Palmer Square? Do they sell cut rate milk?
A. Palmer Square?
Q. Yes?
A. No, they do not.
Q. You are sure of that?
A. Yes.
Q. You never seen any of their stores selling their milk?
A. No.
Q. Are the employees of the Palmer Dairy members of 753, Mr. Witness?
A. I do not know that.
Q. You do not know that either?
A. I would not know that.
Q. Are you acquainted with the Silver Cup Dairy, Mr. Wagner?
A. I am not.
Q. You do not know anything about them?
A. No.
Q. Have you seen any of their stores selling cut rate dairy milk?
A. I think I have.
Q. And do you know whether their employees are members of 753?
A. I do not know.
Q. Do you know whether or not the Capitol Dairy sells cut rate milk?
A. The Capitol Dairy does not.
Q. You are sure they do not sell cut rate milk?
A. I am positive.
Q. Do you know whether or not their employees are members of 753?
A. I think they are.

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47 Q. Did you mention their names to the State Attorney's Office?
A. Why should the States Attorney—

Q. Why didn't you mention their names to the State Attorney's office, if you knew them?

Mr. Seelig: Let him answer.

Mr. Riskind: I am cross examining him.

Q. Why didn't you mention their names to the States Attorney's office, if you knew them. If you were held up at the point of a gun?

A. I had no purpose to mention anybody's name. I wanted my truck released from these men.

Q. Did they ask you to identify any of these men?

A. They did not.

Q. Did they ask you to identify them, any of the men that held you up at the point of a gun?

A. They did not even appear.

Q. Who did you talk to?

A. I do not know.

Q. What was his name?

A. I do not know.

* * * * * *

Q. You made no charges against anybody?

A. No, sir.

Q. You signed no warrants against anybody?

A. No, sir.

Q. Did you go down to the States Attorney's Office after that?

A. No, sir.

Q. Did the States Attorney's Office get in touch with you after that?

A. They did not.

Q. You did not get a receipt for that ten dollars, did you, Mr. Wagner?

A. Certainly I did.

Q. From whom did you get the receipt?

A. I do not know if it was from Ray or Mr. Sumner. I have been trying to locate that receipt and I was unable to.

Q. Where did you put that receipt?

48 A. I do not know. I have it. I have been looking in my files trying to locate it and was unable to locate it.

Q. Did you talk to any attorney at that time about this occurrence?

A. No, sir.

Q. Did Mr. Bryant and Fitchie use any of these guns that you say they did?

A. No, sir.

Q. They did not use any of these guns?
A. No, sir.

* * * * * *

Further Cross-Examination by Mr. Riskind.

Mr. Riskind: Q. Now, you stated that the Belmont Dairy had been bombed, isn't that right?
A. No, sir.
Q. Didn't you state on direct examination when your attorney, Mr. Seelig, questioned you as to what happened at the Belmont Dairy, didn't you state that the Belmont Dairy had been bombed?
A. I stated that the Belmont Dairy had the machinery all broken up, the pasteurizers broken, the coolers broken, but I did not state the Belmont Dairy was bombed.
Q. And do you know whether or not a complaint was lodged against the Blue Ribbon Dairy for that outrage by Mr. Belmont?
A. I do not know.
Q. Do you know whether or not the Blue Ribbon Dairy is a cut rate dairy employing non-union help?
A. I do know that.
Mr. Seelig: I object to that.
The Master: He answered.
The Witness: I do know that.
Mr. Riskind: Q. You do know that?
A. I do know that.
Q. And you do not know whether that outrage was charged to the Blue Ribbon Dairy?
A. No, I would not know that.
49 Q. Do you know whether or not the Milk Wagon Drivers Union of Chicago was charged with that outrage?
A. I do not know that.
Q. Do you know whether the Lake View Dairy was bombed at any time?
A. Yes, I do know that.
Q. Do you know whether the union was charged with that or whether Mr. Belmont, the former owner of that Lake View Dairy, was charged with that outrage?
A. No, I would not know who was charged.
Q. You would not know who was charged with that outrage?
A. No.
Mr. Seelig: I would like to inject an objection to the

general form of all of this, when he says, "who was charged," we do not know who charged which and who. I think the form is bad.

The Master: As long as he knows nothing about it, what is the difference?

Mr. Riskind: Q. So that when you make statements that the Lake Valley Dairy and Belmont Dairy were bombed, you do not know who did that bombing, do you?

A. No, sir.

Q. For all you know it may have been the cut rate competitors, isn't that right?

Mr. Seelig: I object to that.

The Master: Sustained.

Mr. Riskind: Q. Now, you did state that the Wagner Dairy had been bombed in 1931, 1932 and 1933, is that right?

A. Yes, sir.

Q. Now, isn't it a fact, Mr. Wagner, that when these bombings took place some other association entirely separate and apart from the Milk Wagon Drivers Union were charged with that crime? Did you know that? Yes or no?

A. Could I hear that statement again, please?

Mr. Seelig: Read it, Mr. Reporter.

(Question read by the reporter.)

The Master: Charged by whom?

Mr. Riskind: Q. Charged by the Wagner Dairy with that crime?

The Master: All right, let us find out.

50 Mr. Riskind: I am sorry I left that out.

Q. Yes or no, Mr. Wagner.

A. I do not know who they were charged with. I would not know that.

Q. Didn't you file a complaint against another association charged them with the bombing at that time? Didn't your dairy do so?

A. No, sir, not that I know of.

Q. You are sure of that?

A. Yes, sir.

Q. Didn't you apply to the Superior Court of Chicago for an injunction against the Pure Milk Association to prohibit such bombing?

A. We did file but not against bombing.

Q. What did you charge the Pure Milk with at that time?

A. Interfering with our milk business.

Q. But you did not charge them with bombing?
A. No, sir.
Q. You are sure that that allegation was not made in the bill?
A. I do not recall.
Q. And didn't you get an injunction against the Pure Milk Association?
A. We did.
Q. The Milk Wagon Drivers Union at that time was not charged with that offense, was it?
A. I do not think so.

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Q. Are those the only three stores you mentioned as being picketed at the present time?
A. That is right.
Q. Or being picketed within the last month?
A. That is right.
Q. Out of the entire 336 stores that you said was dairy supplies, you have only three stores being picketed at the present time, isn't that so?
A. No, sir, I cannot tell you the exact street numbers of the stores. I have to have the record here.
Q. You do not know them now?
A. I cannot memorize them, no, sir.
Q. You say there are about fifteen altogether that
51 are being picketed altogether out of the 336 stores?
A. Twelve to fifteen, to my memory.
Q. Out of the 336 stores?
A. That is correct. That is in the last month.
Q. That is in the last month?
A. That is correct.

* * * * * *

Q. Now, how many times have you driven milk trucks yourself?
A. Oh, quite a lot.
Q. You do not belong to any union yourself, do you?
A. I do now.
Q. Which union do you belong to?
A. I joined the C.I.O.
Q. You also joined the C.I.O.?
A. Yes, sir.
Q. And have you any other managers besides yourself?
A. Managers? No, sir.
Q. When did you join the C.I.O., Mr. Wagner?
A. Around April 15th.
Q. And did you pay dues?

A. Yes, sir.
Q. And do you know how they intend to regulate your wages?
A. A matter of time, yes.

A. No, they have not.
Q. Not a word about that?
A. No, sir.
Q. When did you say you joined, Mr. Wagner?
A. I would not exactly know the date unless I looked at the form.
Q. You have no idea what date it was, have you?
A. I do not recollect what that date was, no.
Q. Are you sure it was the month of April you joined?
A. I do not know unless I see that form.
Q. Have you a membership card in that union, Mr. Wagner?
A. Yes, sir.
Q. Have you it here?
A. I haven't.
Q. Where is it, do you know?
A. At the dairy.
52 Q. You keep it in the dairy? You do not keep it on your person, or did you just happen to leave it there today?
A. I leave all my things at the dairy.
Q. When did you sign this contract with the C.I.O., 819?
A. I would not know, Mr. Riskind, unless I looked on the form. I would not know the date. I would not memorize the date.
Q. Was that before or after you became a member of 819, Mr. Wagner?
A. Was it what?
Q. Did you sign this contract before or after you became a member of 819?
A. We signed the contract before.
Q. Before you became—before your men also became members of 819?
A. No, sir.
Q. You signed it before?
A. I signed it after the men.
Q. And before you became a member?
A. After we signed the contract, then I took membership in the union.

Q. Now, this contract is signed by the Wagner Dairy Products by Frank Wagner, is that right?

A. That is correct.

Q. Are you an official of this organization?

A. I am.

* * * * * *

Q. Then, you have a personal interest in this union outside of being an employer, have you not?

A. Outside, yes.

Q. You have a personal interest in this organization outside of being an employee, too, haven't you?

A. I have—

Mr. Seelig: I object to that.

The Master: He may answer.

The Witness: A. No interest outside of being a member.

Mr. Riskind: Q. That is the only interest you have?

A. That is right.

Q. What is your salary per week at the dairy?

53 A. $35 per week.

Q. You smile at that don't you?

Mr. Seelig: I will ask that Mr. Riskind's remarks be stricken from the record as improper.

The Master: Strike it out.

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Redirect Examination by Mr. Seelig.

Q. Do you know how many men are employed on a wholesale route using members of the Milk Wagon Drivers' Union, Local 753?

Mr. Riskind: Will you state that question again? I didn't get it.

Mr. Brussel: You mean in the entire city of Chicago?

(Question read by the reporter.)

The Witness: A. Just one man.

Mr. Seelig: Q. How many employees do you use on each wholesale route at your dairy?

A. Two men.

Q. What is the cost to a dairy for salary, on a wholesale route employing men who are members of the Milk Wagon Drivers' Union, Local 753?

Mr. Riskind: I am going to object.

A. Forty-eight dollars and commission.

Mr. Riskind: Just one second.

The Master: He may answer, if he knows.

Mr. Riskind: We haven't brought that out.

Mr. Seelig: You brought that out exactly on cross examination. What is the answer?

A. Forty-eight dollars a week.

Q. What is the cost to your dairy for each wholesale route, for salary?

A. Fifty-five dollars to sixty dollars per week.

Q. How many hours a day do the drivers and helpers on these routes work?

A. They work five hours per day.

Q. Do any of these men have additional employment after they leave your dairy at ten o'clock in the morning?

A. They do.

54 Q. How many hours would a man have to work to distribute the same amount of milk if he worked alone on that truck?

Mr. Brussel: I object to that.

The Master: He may answer if he knows.

The Witness: A. From eight to ten hours.

Mr. Seelig: Q. Are the helpers on your truck old or young men?

A. They are men from the age of twenty to twenty-two years of age.

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Recross Examination by Mr. Brussel.

Q. Mr. Wagner, what other dairies are being organized at the present time by the C.I.O.?

A. Well, the Blue Ribbon Dairy.

Q. Any others?

A. I think the Edgewater Dairy is organized.

Q. Any others?

A. The People's Dairy.

Q. Any others?

A. That is all I know of.

Q. Did you speak to any official of the Blue Ribbon Dairy in the last thirty days?

A. I did not.

Q. Have you spoken to any official of the Edgewater Dairy in the last thirty days?

A. I have.

Q. To whom have you spoken?

A. To Mr. Garrity.

Q. That is the gentleman you testified you talked to before at the time you first found out of the C.I.O. union?

A. Yes, sir.

* * * * * *

Q. Did you have any reason at all for joining the C.I.O., Mr. Wagner?

Mr. Seelig: I object to that.

Mr. Riskind: It is all along the same line.

The Master: He may answer.

The Witness: A. Yes, I did.

Mr. Brussell: Q. What was your reason?

A. We wanted to belong to the union.

55 Q. And what did you think the union was going to do for you, if anything?

Mr. Seelig: I object to that.

The Master: He may answer.

The Witness: A. It was going to help us all around in our general business.

Mr. Brussell: Q. Help whom?

A. To our business.

Q. You mean the Wagner Dairy Company?

A. Yes, sir.

Mr. Brussell: That is all.

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MINNA KUELLMAR:

Direct Examination by Mr. Seelig.

Q. And what, if anything, happened about that time concerning your store premises?

A. My store—the windows got broke.

Q. When was that?

A. That was about three years ago or four years ago.

Q. And what if anything else happened?

A. Well, there was a milk strike on and my driver drove the truck and my husband and I followed him in the truck and as we got to the Outer Drive—

Mr. Riskind: Q. That was three years ago, would you say?

A. No, about five years ago. A truck pulled up—a car pulled up with about five men in it and forced the driver over to the curb and shot at him and missed him by his face and my husband and I shouted at the five fellows in the car and we took the kid out of the truck and ran back to Broadway and Montrose to get a police officer and by the time we got back they had poured gas on the car and

the whole truck was on fire and the fellow that worked for—what do they call them things—to put the fire out with—a fire demonstrator.

Mr. Seelig: Q. A fire extinguisher, you mean?

A. Yes, he put the fire out and in the meantime a couple of ladies come along and they seen them and they thought it was us and took a crank and smashed the lady's windshield and cut her face and it was full of blood.

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56 *Cross-Examination by Mr. Riskind.*

Mr. Riskind: If the wages of our men belonging to 753 were lowered or injured because of this cut-rate milk being delivered by non-union drivers, would that stop you from taking cut-rate milk?

Mr. Seelig: I object to that.

The Master: She may answer.

The Witness: A. I must—

Mr. Riskind: Yes or no.

The Witness: A. I did not get the answer.

Mr. Riskind: Read the answer to her.

Mr. Seelig: I feel that question requires a conclusion. It is inconsistent with all the elements.

The Master: Let her answer.

Mr. Seelig: What right have we?

The Master: Let her answer.

The Witness: A. I do not want to answer.

Mr. Riskind: Q. You do not want to answer?

A. No.

Mr. Riskind: Q. May I ask the Court to instruct her to answer?

The Master: You may answer the question.

The Witness: I still haven't got the answer quite clear.

Mr. Riskind: Read it again to her, please.

(Question again read by the reporter.)

The Master: Put it in simpler language.

Mr. Riskind: Q. If the system by which you get your cut-rate milk delivered—

A. Yes;

Q. —by the members and drivers of 753 is such that wages are lowered and hours and working conditions increased, conditions made worse, would that stop you from buying cut-rate milk?

A. No.

* * * * * *

Q. And why did he give you the card? Did he tell you why he gave it to you?

A. So we won't have any pickets.

57 Q. So you won't have any pickets, and that was the only reason he gave it to you?

A. That is right.

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JOSEPHINE HALL:

Re-Cross Examination by Mr. Riskind.

Q. Have you ever been bothered since that time?

A. Another window was broken.

Q. But you don't know by whom?

A. No, I don't know and this last time my milk sign was thrown right in the window.

Q. And you don't know by whom?

A. This last time the boys admitted—

Q. The U. S. Treasury men admitted they broke the window?

A. Yes.

Q. Did they tell you why?

A. They said they were drunk.

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MRS. ALVINA PUSZKIEWICZ:

Cross Examination by Mr. Riskind.

Q. Now, Alvina, you say Mr. O'Connor talked to you very nicely there, did he?

A. Yes, he did not threaten me at all.

Q. Didn't he tell you the reason these dairies were able to sell cut-rate milk was because they were not paying the union drivers a living wage of forty-eight dollars a week?

A. Yes, sir.

Q. And he told you the only reason they sell milk so cheaply is because they were paying so little?

A. Yes.

Q. And he explained it all very thoroughly to you, didn't he?

A. That is right.

Q. And he stated that they were not paying the Milk Wagon Drivers a decent wage?

A. Yes.
58 Q. And he showed you that was the reason?
A. Yes, sir.
Q. And you were interested in making your own living and not interested in the men making a living selling milk?
Mr. Seelig: I object to that. We have shown that we pay our men higher wages than you do yours.

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Q. He is your milk driver?
A. Yes, sir.
Q. And when he gave you this sign, did he tell you something about it?
A. He told me I could be prefectly safe if I would put that in the window and he told me they joined the union and they were organized and I would be safe to sell the milk, but when these pickets came around and told me it wasn't any good and the other union doesn't recognize it, then, I took it off.
Q. Then you took it right off?
A. They were out there. What good did it do to have the sign in the window?
Q. Did he tell you when he gave you that sign the only purpose in making up the sign was to try and destroy the local 753?
A. Yes, sir.
Q. He told you they were trying to destroy the Milk Wagon Drivers' Union?
A. What is that?
Q. They told you they were trying to wreck the Milk Wagon Drivers' Union number 753?
A. Yes, the union did.
Mr. Riskind: That is all.
The Master: Call the next.

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MARIE LAYCHAK:

Direct Examination by Mr. Seelig.

Q. And what result did the picketing have on the quantity of milk you sold?
A. Well, I did not lose any milk business but my restaurant business fell down so bad I had to close.
Q. Your business is primarily a restaurant business?
A. Partly, yes. There isn't enough there either way to make a fair living, so that is why I took in the milk.

* * * * * *

59 *Cross Examination by Mr. Riskind.*

Q. The fact that this cut rate milk was sold so cheap because of lower wages paid to the drivers, did that make any difference to you?

Mr. Seelig: I object to that. It states a conclusion that it is so cheap because of lower wages, which is not so.

Mr. Riskind: If it were so, would that make any difference?

Mr. Seelig: I object to that. It is purely conjecture, if the Court please.

The Master: I do not think so.

The Witness: A. I would still sell it.

Mr. Riskind: Q. You would still sell it?

A. Yes, I certainly would.

* * * * * *

Q. Now, you say your sales did not drop off the milk, didn't you?

A. No, my sales are the same.

Q. They are the same?

A. Yes.

Q. The picketing did not affect the sale of your milk?

A. Not the milk business, not at all.

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60 GUST PALMER:

Direct Examination by Mr. Riskind.

Mr. Riskind: Q. Will you tell us what occurred at your plant and when?

A. Someone got in the dairy about five months ago and broke our machinery.

Q. What do you mean, "broke up the machinery"?

A. They broke the machinery with a sharp instrument, with a pick. They broke our pasteurizers, our filter, our cooler and our motors.

Q. Did you cause anybody to be arrested?

A. Yes, I did.

Q. Who were those parties, if you know?

A. That was the president and the secretary of the Uptown Dairy.

Q. Are they associated with the Blue Ribbon Dairy, do you know?

A. Yes, they are.

Q. Now, are any of your drivers members of Local 753?
A. I do not know.
Q. You do not know whether your men are members of 753?
A. I do not know.
Q. Would you call yourself a cut-rate dairy?
A. In a way, we are.
Q. What do you mean by in a way you are?
A. We sell cut-rate, and also we sell full price.
Q. Did you at any time charge the members of Local 753 with the commission of that outrage at your dairy?
Mr. Seelig: I object to that. I do not think it is material who he charged.
The Master: He may answer.
Mr. Riskind: Q. Did you?
A. No, sir.
Q. Do you know whether any member of 753 did this to your dairy?
A. I do not know.
Mr. Seelig: I object to that.
The Master: Q. Do you know who did it?
The Witness: A. Well, I do not know.
Mr. Riskind: Q. Had you received any threats from any members or any drivers belonging to the Blue Ribbon Dairy and Uptown Dairy prior to the outrage at your dairy?
61 A. We did.
Q. From whom?
A. From the secretary of the Blue Ribbon Dairy and Uptown.
Q. And what is his name?
A. Ingraffia.
Q. What were the threats?
A. The threats was if we are taking more business from them, we would be very sorry.
Q. Did you inform the police about this when you had the men arrested?
A. We did?
Q. Now, do you know whether the Blue Ribbon and Uptown are cut-rate dairies?
A. What?
Q. Do you know whether the Blue Ribbon and Uptown are cut-rate dairies?
A. They are cut-rate dairies.
Q. Do you know whether or not their men are members of the union, Local 753?
A. I do not know.

Q. Now, were you ever an officer of the Lake View Dairy which is now known as the Lake Valley Dairy?
A. I was an officer of the Lake View Dairy.
Q. Yes, until what time were you so an officer?
Mr. Seelig: I object to that. Not material.
The Master: He may answer.
The Witness: A. Until the last part of 1936.
Mr. Riskind: Q. And what office did you hold?
A. President of the company.
Q. Did you know a man named Sigfried Weiss at that time?
A. Will you point him out, please?
A. There is the gentleman, with glasses.
Mr. Riskind: For the purpose of the record, the witness is indicating Sigfried Weiss.
Q. Did he hold a position at the dairy at that time?
A. He was traffic manager.
Q. And what salary did he receive?
Mr. Seelig: I object.
62 Q. Now, have your stores been picketed by members of 753?
Mr. Seelig: I object to that.
The Master: He may answer.
The Witness: A. My stores, yes, they do.
Mr. Riskind: Q. Are they being picketed now?
A. They do.
Mr. Riskind: That is all.

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JOSEPH SCHLEE:

Cross Examination by Mr. Seelig.

Q. You don't know anything about Lake Valley, do you?
A. I know they are in business and I know who is connected with it and all that.
Q. Well, then, you haven't any knowledge whatsoever as to what Lake Valley vendors make at this time, have you?
A. Well, yes, I have, because Lake View and Lake Valley, I understand, are combined into one and I know quite a few vendors that have been over there and some of them even left and went different places.

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Re-Direct Examination by Mr. Riskind.

Q. You say you are not on good terms with Mr. Kizer?
A. No, sir.
Q. Why are you not on good terms with Mr. Kizer?
A. Well, first of all, he cheated me out of some money.
Q. How much money?
A. I put in about thirty-five hundred dollars in the Lake View Dairy and they pushed me around so much that I had to get out and get out with about twelve hundred dollars.
Q. Is that the only reason you are not on good terms with Mr. Kizer?
A. Yes, sir.

* * * * * *

63 STEVE SCHOSTOK:

Re-Direct Examination by Mr. Riskind.

Mr. Riskind: Q. Why are you opposed to the vendor system?
Mr. Seelig: I object to the question. On direct examination I think it is improper.
Mr. Riskind: I think you asked him that on cross examination.
Mr. Seelig: On cross examination I have a right to.
The Master: Proceed. Let us find out what he has in mind.
The Witness: A. I found out that I make a better living than I used to make before.
Mr. Riskind: That is all.
Mr. Seelig: May I ask just one or two questions?

Re-Cross Examination by Mr. Seelig.

Q. May I ask you, if a vendor made as good a living as you and he worked as short or shorter hours, you wouldn't object to being a vendor, would you?
A. Well, not exactly, but I found it was impossible to.

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WALTER JOB:

Direct Examination by Mr. Riskind.

Q. Were you at any time a vendor of milk and dairy supplies?

A. Yes, I was.

Q. For whom?

A. Well, I had my own route. I used to buy my milk from the Reliable Dairy.

Q. And was that a union dairy at that time?

A. No, sir.

Q. Was it a cut-rate dairy at that time?

A. No, sir, it was not.

Q. You sold your milk at the regular prices?

A. Yes, sir.

Q. And how many days a week did you work as a vendor?

A. Seven days a week.

Q. And can you state here what your net earnings were per week.

64 A. Around fifteen dollars per week.

ALPHONSE ZELLER:

Re-Direct Examination by Mr. Riskind.

The Witness: A. I think it is the wrong kind of an answer, so I had better refrain from answering.

Mr. Riskind: Q. No, give us the answer. I want it. Why are they able to undersell you?

A. The dairies are able to undersell because they own no trucks and do not pay any wages and no overhead at all to pay, compared to the overhead we have; charging for the bottles—that was my tremendous loss at that time.

Q. As I understand you, you suffered a tremendous loss because of that?

A. Yes, sir.

Q. And that was the reason you objected to it?

A. Yes, we were charged with all bottles, twenty-five cents on every case we took out. The dairy could not lose a cent.

Q. It was because they paid you no wages that they were able to do it?

Mr. Seelig: I object to that. Just a moment.
Mr. Riskind: Q. Is that the reason?
A. Yes, because of that.
Q. Is there any further reason you objected to the vendor system?
A. Well, the two main items are the question of underselling us in price and the earlier hours, which is a large item. A lot of our trade we lost and couldn't hold simply because the other men got there earlier.
Mr. Riskind: That is all. I think he has given us a lot.
Mr. Seelig: Yes, he has given considerably and I think he is a very truthful witness, too.
Mr. Riskind: Yes.

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HARRY WALD:

Direct Examination by Mr. Riskind.

Q. Who is Mr. John O'Connor?
A. He is supervisor over the pickets.
65 Q. Now, just tell us what those instructions were?
A. And he instructed me to wear the banner and not to talk to anybody, just to walk up and down in front of the store, and if we are caught talking to anybody, we are pulled off the job and fired.

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Q. When you say your men were thrown out of work, what do you mean by that?
Mr. Seelig: I object to that, if the Court please.
The Master: He may answer.

* * * * * *

The Witness: A. For the simple reason that the vendors, they work longer hours and draw less pay than the union drivers do.
Mr. Riskind: Q. And has that caused any kind of competition between your drivers and the vendors?
A. Well, it has.
Q. What kind of competition has that caused?
A. Because if we aren't out on the street all day, we lose our business, practically, because the vendors are out practically day and night, going after a lot of business.
Mr. Riskind: That is all.

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Cross Examination by Mr. Seelig.

Q. Now, all of this picketing has taken place at stores that are selling cut-rate milk, is that correct?

A. No, Just the stores that carry non-union milk.

Q. Well, as a matter of fact, when you refer to non-union milk, you mean cut-rate milk, do you not?

A. I mean—

Mr. Riskind: Objection, if the Court please. Just one second. Don't answer until I make an objection. I object to that last question he just asked.

The Court: He may answer.

Mr. Seelig: Q. Would you like to hear that question again? Do you remember what the question was?

A. No, sir.

Mr. Seelig: Read that to him.

66 (Question read by the reporter.)

The Witness: A. I mean milk delivered by non-union drivers.

Mr. Seelig: Q. You would have no objection, then, to a store selling cut-rate milk that came from drivers affiliated with another union, would you?

A. As long as they are a union driver.

Q. Now, will you state the address of any store that you have picketed during the last year that did not sell cut-rate milk?

Mr. Riskind: Objection. Just one second, if the Court please.

Mr. Seelig: No, that is very important.

Mr. Riskind: Well, objection to the question. You are calling for a conclusion. That may not be so;

The Master: Do you know?

Mr. Seelig: Well, I withdraw that.

Q. Have you in the last year picketed any store that did not sell cut-rate milk?

A. I don't remember whether I have or not.

Q. You don't remember any store that you picketed in the last year that did not sell cut-rate milk, do you?

A. I don't remember if I have.

Q. You remember, however, that you did picket various stores that sold cut-rate milk, do you not?

A. Non-union milk.

Q. Selling milk at cut-rate prices?

A. No, sir. We are not interested in cut-rate prices at all.

67 Q. But do you or do you not remember that any of the stores that you picketed during the last year sold cut-rate milk?

A. All I picketed was stores that carried non-union milk.

Q. You have no idea as you sit there whether they sold milk at cut-rate prices or at the same price as delivered milk, do you?

A. As far as the price, I don't know anything about the price at all.

Q. Do you mean that you don't know the price at which milk was sold at any one of the stores you picketed in the last year?

A. I wasn't interested in the price.

Q. Then the answer is, you do not know?

A. I do not know.

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BERNARD F. RICHARDS:

Cross-Examination by Mr. Seelig.

Q. During that same period, referring to the past five years, have you seen any stores that suffered any other acts of physical violence against them?

A. Well, what do you mean? Besides windows broken?

Q. I mean windows broken, stench bombs or injuries of any other kind, price signs torn down, have you seen any?

A. Yes.

Q. About what number of those incidents would you say you have seen during that period?

A. Well, if you want to take it from the time I started, that was August, 1934.

68 * * * * *

Q. You are opposed to the sale of cut rate milk, are you not?

A. Well, I am opposed to the vendor system.

Q. Why are you opposed to the vendor system?

A. Well, their hours are longer and it is a cheaper commodity.

Q. What do you mean by a cheaper commodity? You used the expression on another occasion.

A. It is two or three cents cheaper, I told you about.

Q. Yes? And what other objection have you to the vendor system?

A. They don't belong to the union and their hours are longer and I know they don't get the pay we do. And—

Q. Now,—pardon me. Is there anything further you wish to say on that?

A. That is all.

Q. Now, as a matter of fact, if the vendor would belong to the union and get as high or higher wages and worked the same number of hours, you would have no objection to the vendor system, would you?

A. If they belonged to the union I belong to, I would not.

Q. But if they belonged to any other union, you would oppose them, is that correct?

A. If I thought it was an outlaw or didn't—wasn't the right kind of a union.

* * * * *

COLUMBUS STELLE:

Cross-Examination by Mr. Seelig.

Q. Would you be opposed to the distribution by vendors if the vendors worked shorter hours and made more money than a milk wagon driver?

A. Well, all I am interested in is in a union driver.

Q. But, if a vendor were a member of a union and had good working conditions, would you be opposed to that?

A. Not, if he was a member of the Milk Wagon Drivers' Union.

Q. But, if a member of any other union and had good working conditions, decent living wages, would you object to that?

A. Well, not if he had an American standard of living wages.

* * * * *

69 CHARLES SEGALE:

Cross-Examination by Mr. Seelig.

Q. The stores that you picket, those are the stores that sell cut-rate milk, is that right?

A. Well, they sell non-union milk. I don't know whether it is cut-rate or not.

Q. Will you name any store that you have ever picketed that did not sell cut-rate milk?

A. Well, I don't really know whether it is cut-rate milk. All I know is they are not being supplied by union drivers.

* * * * *

Q. When you talked about vendors' competition on direct examination, you were referring to retail vendors, were you not?

A. Yes.

Q. You were not referring to cut-rate milk stores, were you?

A. No, sir.

Q. What objection have you to the sale of cut-rate milk in stores at this time?

A. I haven't any objection to any cut-rate milk. It is just that it is non-union, that is all.

RAY BRYANT:

Direct Examination by Mr. Riskind.

Q. Now, Mr. Bryant, have the union commenced to place pickets at any of the stores selling milk delivered by men not belonging to Local 753?

A. We have.

Q. When did that first commence?

A. Oh, I should judge three or three and a half years ago.

Q. Would you say it was about 1934?

A. I think so, yes.

Q. Will you just tell us why you started the first picketing?

A. Why, we did not want to see any of our union drivers lose their business to these non-union dairies and we put the pickets on in order to try and educate the public that this store was selling non-union milk and hoped that it would have an effect on that store keeper, so
70 that he would return to a union driver, and it was very successful.

Q. Has that been successful to date?

A. It was very successful.

Q. Now, about how many stores were picketed before April 25th, 1938, an average per day, I should say?

A. I have about twelve men working; I should judge six.

Q. Six stores were being picketed per day?
A. Yes.
Q. Before April 28th, 1938?
A. The number of our pickets changed at various times. At one time I had more, but it dwindled down to about twelve in the last year and a half.
Q. How many pickets are employed by the Milk Wagon Drivers' Union, Local 753, at the present time?
A. Pretty close to a hundred and forty.
Q. And when did you increase the number of pickets?
A. After May 1st.
Q. 1938?
A. Yes.
Q. Why?
A. For two or three years we had been hampered in picketing on account of a court order which restrained us from picketing the outlets of one of the largest independent dealers in Chicago, and on the twenty-fifth of April, that restriction was removed and we were allowed to peacefully picket.
Q. Removed by the court?
A. Removed by Judge Fardy in the Superior Court.
Q. And because of that, you immediately—
A. I did not immediately, no. That was on the twenty-sixth, and there was quite a little consideration on it for several days and it was about May 1st or May 2nd that I started to put on the new men, and I put on twenty-five or thirty a day for several days, until I got up to the present number.
Q. Are the stores of the Lake Valley Dairy and the stores of the Wagner Dairy the only ones that are being picketed at the present time?
A. No.
Q. Will you tell us just what stores you are picketing at the present time, and what dairy supplies they handle?
71 A. Well, I will have to admit that the majority of the stores we are picketing today are stores serviced by the Meadowmoor Dairy. There is several Lake View, and maybe two or three Wagner. I know there is a Belmont stop or two being picketed, and possibly a couple of stops of the Blue Ribbon-Uptown.
Q. The Wagner and Lake Valley Dairies were not singled out for any specific purpose, were they?
A. At no time.

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Q. Before the vendor system started, did you have any men on relief?

A. No.

Q. And after the vendor system started, did you have any men on relief?

A. We did.

Q. About how many?

Mr. Seelig: I object to that. I think it is all immaterial.

The Master: He may answer.

The Witness: A. We had up to eight hundred, at one time, that we were paying.

Mr. Riskind: What do you mean by paying?

Mr. Seelig: Pardon me. For the record, what do you mean by relief? Do you mean government relief?

Mr. Riskind: Union relief. I should say, union relief.

Q. By that you mean union relief?

A. Union relief, yes.

Q. All right?

A. In 1931, I believe a lot of men were losing their jobs on account of this system that had come into the business and we wanted to take care of them, so the boys assessed themselves a dollar a week to take care of those men that were not able to find positions.

Q. By that you mean the men who were employed assessed themselves?

A. A dollar a week.

Q. To take care of the unemployed?

A. To take care of the unemployed members.

Q. Yes?

A. A little later, the number got so large we had to cut it down to fifteen dollars, I think after six or eight months.

72 We carried them along for pretty near a year and then the last year, why, we had to cut it down to eight dollars a week. We had this in effect for thirty months and then the men coming in twice a week and getting that eight dollars and they seemed to have no desire, I guess, to get anything else to do, and our men got disgusted and they voted in open meeting to stop the assessment.

Q. Did the union suffer any financial loss by this relief?

Mr. Seelig: I object, that is immaterial.

The Master: I think he may answer.

The Witness: A. We contributed about a hundred and fifty thousand dollars from the treasury to this relief fund. That is over and on top of the assessment.

Mr. Riskind: Q. Now, Mr. Bryant, were the books of the union closed at any time?

A. They were.

Q. What do you mean by books being closed?

A. We stopped taking in members. That was in the winter of 1932. We took a reduction in wages at that time, and in order to get our men back to work, to take care of our own members, we entered into an agreement that there would be no new men hired. Our books were closed at that time to any new men coming into the organization.

Q. And for what period of time were they closed?

A. I guess about three years.

Q. Now, was any exception made?

A. Yes.

Q. What exception?

A. Vendors.

Q. Did you take vendors in while your books were closed?

A. We did.

Q. Why?

A. Well, we wanted to clear up the market and clear up the situation, and when the vendors applied to us to take them in, we took them in. First we took them in and put a fine on them. We thought they had done something wrong, especially, the old members, by going out and entering this other system of delivery, and later on we removed that fine and refunded those that paid the fine, and we opened the doors to the men that wanted to join and become drivers.

Q. Did they agree to the conditions of wages and hours when you took them in?

73 A. Certainly, they secured it. You understand, we took them in, of course, as drivers.

Q. Yes, Now, are the salaries or wages paid to the drivers employed by union dairies ever dependent on the retail price of milk in Chicago?

Mr. Seelig: I object.

The Master: He may answer.

The Witness: A. They do not.

Mr. Riskind: Q. Did the union ever enter into any price agreement with any of the dairies?

A. No.

Q. Were the wages of the men who were members of 753 ever increased when the price of milk was decreased in Chicago?

Mr. Seelig: I object to that. I think that is immaterial.

The Master: Under the combination charge?

Mr. Seelig: All right, let them proceed.

The Witness: A. Yes, I can recall two cases.

Mr. Riskind: Q. Will you tell us just when and how that happened?

A. I think it was 1920; in 1920, March, the price of milk was fifteen cents the first day of March, and it was reduced to fourteen cents, and we were just ending up a three year agreement and they were negotiating with the dealers at that time for an increase, an increase of nine dollars a week, quite a substantial increase, brought out on account of the low wages we had to work for.

Q. What wages were the men receiving at that time?

A. Receiving twenty-six dollars, but working under a three year contract, which called for twenty-one, but they voluntarily had given us one dollar. This was during the war period. They had given us one dollar and the government came in and gave us four dollars more, which made it twenty-six. Of course, we had to live up to our agreement and we lived up to our agreement. We thought we were entitled to an increase and asked for nine dollars a week, they decreased the price of milk on quarts and pints as well, and we went ahead and received our increase after a five day lock-out, raising our wages to thirty-five dollars.

Q. Recently, did that occur?

A. That occurred last year.

74 Q. Tell us when?

A. Last year we signed a contract, the first of May, which granted us a two dollar increase then and a three dollar increase the first of May, 1938.

Q. What salary were you receiving before the first increase?

A. Forty-three dollars. We were getting forty-three dollars and we got up to forty-five and three dollars a week increase was to come into effect May 1st, 1938, and they seen fit to reduce the price of milk from thirteen cents to twelve cents, just previous to that.

Q. And you got your increase anyway?

A. We got our increase just the same without any trouble. It was signed last year.

Q. Now, is this grievance that you have mentioned as to the vendor system directed against the dairies or against the delivery system under which these vendors operate?

A. I repeated several times it is against the system. It reduced our membership. It killed our hours. It is against the system altogether.

Q. Are non-union dairies the only ones selling cut-rate milk at the present time?

A. No.
Q. Who is selling cut-rate milk, if you know?
A. It would be much easier to say who is not. I think there is only one dairy in the City of Chicago to my knowledge that is not selling cut-rate milk.
Q. And who is that?
A. The Wanzer Dairy Company.
Q. And how many dairies have you that employ members of Local 753?
A. It is a kind of hard question to answer. A hundred and twenty odd, I suppose.
Q. And you would say about a hundred and nineteen, or thereabouts, sell cut-rate milk at the present time, is that right?
A. Yes, I would make that statement.
Q. Would you say that the Wrightwood Dairy sells cut-rate milk?
A. To a very great extent.
Q. Do they employ members of the union?
75 A. Yes, sir.
Q. Would you say that the Boyda Dairy sells cut-rate milk?
A. Yes.
Q. Do they employ members of the union?
A. Yes, they do.
Q. Would you say the Palmer Dairy sells cut-rate milk?
A. Pretty near all their milk is.
Q. Do they employ members of the union?
A. They do, inside and outside.
Q. Is cut-rate milk a part of this dispute?
A. I have said right along it is the system that we are fighting and not the price.
Q. All right. Now, has any member of the Milk Wagon Drivers' Union, if you know, ever impeded or stopped the commerce of milk through interstate channels?
Mr. Seelig: I object to that. That calls for purely a legal conclusion.
The Master: He may answer, if he knows.
Mr. Riskind: Q. If you know?
A. I do not know of any such occasion. I will say we have not. You mean, if I understand you right, have we done anything to stop milk coming from another state into here?
Mr. Riskind: Q. Yes?
A. We have not. Of course, I am talking officially.
Mr. Seelig: What is that?

The Witness: Of course, I am talking officially. You are not pinning me down to what John Jones did.

Mr. Riskind: Q. You are talking for and on behalf of the Milk Wagon Drivers' Union of Chicago?

A. Yes.

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Q. I will ask you about that. When you hire them, these pickets, Mr. Bryant, do you give them any instructions?

A. Yes, we do.

Q. What instructions do you give them?

A. I tell them to do exactly what John O'Connor has told them to do. I emphasized we want them to walk up and down and not talk to anybody, and there is one
76 there on duty all day, with the banner, and he is instructed to talk to absolutely nobody. The relief man may, if somebody wants to ask him a question, and talk to him, but I told them to the extent, that they should not do anything ever, further than ask them, if they are in doubt, whether to go in, why to refer them to their office, and if they want to go in, why, they go in. Some deliveries are being made where men do go through, but the majority of them, I will probably say, do not make deliveries.

Q. And you say, again, that is not through threats or molestation of any kind?

A. No sir, through their obligation.

Q. Now, have the union officials ever authorized any violence of any kind to be committed?

A. Not to my knowledge.

Q. And have you ever talked to the men about violence?

A. Yes.

Q. About broken windows?

A. Yes.

Q. What have you told these men?

Mr. Seelig: I object, if the Court please.

The Master: He may answer.

Mr. Seelig: Let us fix the time and place, and everything about it.

Mr. Riskind: He has told it a great many times, that he is unable to—

The Witness: I can fix the time and place, I think of that.

Mr. Riskind: All right, go ahead, if you can.

A. Continually, as I told you before. I called to the States Attorney's office every time there was a broken window, and I have cooperated with them one hundred percent, in trying to get the message to our men that we do

not want anything of that kind, if they do do it. We do not know that they do it, but it looked as though some of them might, and we have got up at meetings and advised against it, and even explained to them the ill effects.

Q. What effects have you explained to them? What have you explained to them as to the effects?

A. We told them it done us more harm than good; done them more harm than good. We have illustrated that to them.

Q. In what way?

A. In stores where windows were broken, and they put up a board. Just like the witness testified the other day she didn't put in another glass and the business of that store increased because the public sympathized with
77 her and if we were doing it, we were doing something to hurt us, but of course, I have my own opinion why most of it was done. It was done to capitalize on—

Mr. Seelig: Just a minute, please.

Mr. Riskind: Q. Do you know why most of this window breaking was done?

A. No, I don't. I have my opinion.

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Cross-Examination by Mr. Seelig.

Q. Will you name the location of any store that has been picketed within the last three months, that was picketed by reason of Borden milk being sold at less than a certain price?

A. There wasn't any.

Q. Was there any picketing at the premises of any Bowman store?

A. There was not.

Q. Was there any picketing at the premises of any Wanzer store?

A. There was not.

Q. Any picketing at the premises of any other store selling products of your union dairies? Let me withdraw that. Has any picketing occurred during that period to any milk store which sold exclusively the products of a dairy employing your members?

A. Why, certainly not, unless—

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STEVE C. SUMNER:

Direct Examination by Mr. Riskind.

Q. I will ask you whether or not the union ever participated in the fixing of the price of milk, either retail or wholesale?

A. No.

Q. Have the union officials, representing members ot the 753, ever sat in any conference where the price of milk was fixed or discussed?

A. No. Do you mean conference with the dealers?

Q. Yes?

A. You can't get those fellows to think of price, even, let along mention it.

Q. Has the union ever attempted to fix the price of milk in Chicago?

A. No, sir.

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The Witness: A. Well, it was somewheres about the middle of February.

Q. Of 1938, Mr. Sumner?

A. Yes, 1938.

Q. Where was that?

A. Over at their dairy.

Q. And why did you go over to their dairy?

A. I got a telephone call from Frank and I was over to the Brown Dairy at Summitt, and he said, "Can you come right over?" And I said, "No, I don't want to, but I will". He said, "It is very important." I said, "All right, I will get right away from here and come over", and I did.

Q. And what did he say to you and what—who was there besides Mr. Wagner and yourself?

A. I think Frank's sister. Is she your sister? Anyways, the girl in the office, I think it is Miss Wagner.

Mr. Wagner: That is right.

The Witness: A. And Frank.

Mr. Riskind: Q. And what did Mr. Wagner say to you, if anything, and what did you say to him?

A. He first told me about the smaller dealers starting an organization, and we talked about different things, and the C. I. O.—

Q. Just give us the conversation in detail, Mr. Sumner, please?

A. We was there about two hours. It is pretty hard to tell you all that was said.

Q. Just tell us what he said to you and what you said to him.

A. Well I said, "Frank, we want your men in the union and we want you to pay the scale and live up to the hours of delivery", and he says, "well," he says, "you know father is an old union man and he was a brewery workman. He belonged to the union and we don't feel right going along here without having it a union dairy". "Well," I said, "that is good. I am glad of that," but he said, "We can't go along on all of your propositions." By the way, I had left a contract previous to that time with him. And he said, "we have to have helpers on the wagons." He said, "Our men can't go out and deliver the goods on time without helpers, and we want the helpers in the union, too." And I said, "Frank, we can't take the helpers in. We want your drivers. We want the inside workers into the other union", and I thought I was going to get
79 money that day, but I said, "Now, Frank—"

Q. Money for what?

A. For initiation of the men.

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A. Well, we talked about the other dealers that were in. There was Maywood Farms, and we have other fellows out there and he said this: "Now," he says, "Steve, they will all do as I do and if you get my men into the union, I will help you get in the others and you will have no trouble". "Well," I said, "all right, Frank, that is fine, but I am not in any position to make any other contract with you than what is there on the paper, and I suggest that you call up Mr. Bryant at the office. He don't know that I am out here".

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Q. Did you ever attempt to organize the Wagner Dairy and when was the first time.

A. About every time I would see him, I would talk about organization.

Q. When was the first time, Uncle Steve, if you know?

A. Well, Frank says he has known me since 1920.

Mr. Wagner: That's right.

The Witness: Somewhere around there.

Mr. Riskind: Q. Some time around 1920, you say?

A. Maybe before. I think before the war.

Q. Now, during the time you talked to Frank Wagner, was the price of milk ever discussed?

A. No.

Q. Did you ever refuse to take the Wagner Dairy men into the union because the milk they sold was at cut-rate prices?

A. No.

Q. Have you ever sought to organize the Lake Valley Dairy?

A. Not with that set-up. I have never been out there.

Q. Did you attempt to organize the Lake View Dairy?

A. Yes.

Q. When was the first time.

* * * * *

Q. And did you attempt to organize the Lake View Dairy?

80 Mr. Seelig: I object, if the Court please.

The Witness: A. Many times.

The Master: He has answered.

Mr. Riskind: Q. Many times?

A. Yes, sir.

Q. Were you successful in organizing that dairy?

A. At one time they took two dollars a week from the men, until they got, the men told me one hundred dollars, and then they didn't get in the union, and they got their money back.

Q. They are not now members of 753?

A. No, they never were.

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MRS. MABLE BRUCE:

Direct Examination by Mr. Seelig.

Mr. Seelig: Q. What took place on this day you have in mind?

A. All I know is we had pickets out there picketing because we had non-union milk.

Q. What pickets were out there?

A. Two gentlemen were there.

Q. There were men that had banners that had some reference to 753?

A. Yes.

Q. Now, what happened on that day? What did you do and what did anyone do?

A. They were picketing and stopping customers from coming in there, and they were talking to them, and we just called the Wagner Dairy up.

JOSEPH KORDA:

Cross-Examination by Mr. Riskind.

Q. And you say it happened in what month and what year—this Ogden Dairy episode?

A. I don't know whether it was the month of April. I don't know the exact year, either, as far as that goes.

81 CHESTER HALL:

Direct Examination by Mr. Seelig.

Q. Were you present when that was said?

A. I was present with my mother when we both talked to this man. He told us he is a representative of this union. What is this union, by the way?

Mr. Riskind: Which union are you talking about?

The Witness: Well, this union that this Mr. O'Connor represents. I have the statement on file at the Chicago Lawn Police Station. It was taken immediately after—

Mr. Seelig: Do you mind if I refresh his recollection?

Mr. Riskind: No, go ahead.

The Witness: The Milk Wagon Drivers Union.

Mr. Seelig: Q. What is that paper you are referring to there?

A. Well, that is the witness subpoena.

A. Oh, I see.

A. He told us that we would have trouble if we continued to handle the milk.

Mr. Riskind: Which milk?

The Witness: A. The Lake Valley milk, which is a cut-rate dairy, and that they didn't have connections with his union, they were—he called them an outlaw outfit or a scab outfit, and he suggested that we take milk from companies that are connected with his union. Well, my mother wouldn't listen to him, so she continued to handle the milk, and they broke our windows shortly afterward.

Mr. Riskind: Objection, now, unless he states who broke the windows, and when and where.

The Witness: The windows were broken about a week after Mr. O'Connor paid us the visit, in the middle of the night. Two bricks were thrown through the large plate-glass windows at night, and the police came and asked us

questions about it, police from the Chicago Lawn station, and we told them about being threatened by this Mr. O'Connor, and this Mr. O'Connor was picked up shortly after that, and I identified him, and then the captain, I believe, from the station, took out a form questionnaire, and he questioned me fully about the threats that were made, and I answered the questions, and I guess they must have it on file; and I know that our windows were put
82 in and they were broken again, and Mr. O'Connor paid us another visit, and we still didn't have anything to do with him, and we lived in constant fear of having—

Cross-Examination by Mr. Riskind.

Q. Now, were any men arrested for breaking these windows?
A. Just Mr. O'Connor was held on suspicion.
Q. No, I asked, was anybody arrested for specifically breaking these windows?
A. No.
Q. Just answer my questions. Are you sure of that?
A. Well, there was a man arrested just recently. There was a window broken, and there was two men arrested.
Q. Do you know who those men work for?
A. Yes.
Q. Who do they work for?
A. Well, this one man's name was Emerick, and I believe he checked payrolls in the Government.
Q. The United States Government?
A. Yes.
Q. And the other fellow?
A. I don't know him.
Q. And neither one of those fellows were milkmen, were they?
A. I don't know.
Q. Well, you know the one wasn't a milkman?
A. Yes.
Q. Have you talked to Mr. Weiss recently?
A. No, just that I called him up last night.
Q. And was that the only time you have talked to him recently?
A. Why yes.
Q. You are sure you have not talked to him at any other time?
A. Absolutely.
Q. Did he visit your store?

A. Why, he visited our store when our windows were broken, when these two fellows came by there, to tell us how much these windows were worth; This man, the
83 father of this boy, wanted to pay for the breaking of the window, and we called Mr. Weiss, to find out how much the window was worth, and he said—

Q. Why did you call Mr. Weiss?

A. Because this man came here with his son that was arrested for breaking of the window.

Q. But how did you happen to call Mr. Weiss to give you a price on the window?

A. Why did we call him?

Q. Yes.

A. So he could handle the matter. My mother gets excited and all, she doesn't know just exactly how to handle those things.

Q. Did you have plate-glass insurance?

A. Why, yes.

Q. Did you call the insurance company?

A. Absolutely.

Q. Why did you call Mr. Weiss, then? Will you tell us why you called him?

A. To come there and talk to the father of the boy.

STEVE SUMNER:

Further Cross-Examination by Mr. Seelig.

Q. You defend—pardon me.

A. Naturally, the union tries to take care of their members. If they are guilty of crime, then we are out.

Q. Then you defend all of your members that are accused of crime in connection with the distribution of milk, do you not?

A. How can I answer that? We don't. If it is called to me that a man is in jail, I generally go over to see what is the trouble. If he is a union member and paid up, I do all that I can too see that he gets a fair trial.

Endorsed: Filed Aug. 15, 1939. Hoyt King, Clerk.

84 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

I, Hoyt King, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, keeper of the records and seal of said Court do hereby certify that the following is an additional portion of the Transcript of Testimony filed in this office on the 15th day of August, A. D. 1939, in case of Lake Valley Farm Products Inc., etc., et al., *vs.* Milk Wagon Drivers Union Local 753 International Brotherhood of Teamsters, Chauffeurs etc., et al., No. 16073.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court this 15th day of August, A. D. 1939.

(Seal) Hoyt King.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 270, inclusive, contain a true copy of the printed record, printed under my supervision and filed on the twentieth day of April, 1939, which together with the Supplemental Printed Record, printed pages numbered from 271 to 353, inclusive, printed under my supervision and filed on the eighteenth day of August, 1939, constitutes the record upon which the following entitled cause was heard and determined:

Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, etc., *et al.*,
Plaintiffs-Appellants,

vs.

Milk Wagon Drivers' Union, Local 753, *et al.*,
Defendants-Appellees,

No. 6900, October Term, 1939, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 26th day of January, A. D. 1940.

Frederick G. Campbell,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the fourth day of October, in the year of our Lord one thousand nine hundred and thirty-seven, and of our Independence the one hundred and sixty-third.

Lake Valley Farm Products, Inc., a corporation; Lake View Co-operative of Watertown, Wisconsin, an Agricultural Co-operative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local, Industrial Union No. 819,

Plaintiffs-Appellants,

6900 *vs.*

Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffers, Stablemen and Helpers of America, a voluntary association; Robert C. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson,

Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

And, to-wit: On the thirteenth day of March, 1939, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellants, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 6900 October Term, 1939.

Lake Valley Farm Products, etc., *et al.*,

vs.

Milk Wagon Drivers' Union, etc., *et al.*

The Clerk will enter my appearance as counsel for the plaintiffs-appellants.

Arthur R. Seelig,
11 S. La Salle St.
Central 7029.

Endorsed: Filed March 13, 1939. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the thirteenth day of March, 1939, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellees, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 6900 October Term, 1938.

Lake Valley Farm Products, etc., *et al.*

vs.

Milk Wagon Drivers' Union, Local 753, etc., *et al.*

The Clerk will enter our appearance as counsel for the defendants-appellees.

David A. Riskind,
134 N. La Salle St.
Abraham W. Brussell,
100 W. Monroe St.

Endorsed: Filed March 13, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the sixteenth day of March, 1939, there was filed in the office of the Clerk of this Court, a Stipulation as to Printing Record, which said Stipulation is not copied here as the same appears on pages 269 and 270 of the printed record in this cause, certified herewith under a separate certificate.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the third day of October, in the year of our Lord one thousand nine hundred and thirty-nine, and of our Independence the one hundred and sixty-fourth.

And afterwards, to-wit: On the twelfth day of October, 1939, the following further proceedings were had and entered of record, to-wit:

Thursday, October 12, 1939.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.

Lake Valley Farm Products, Inc., *et al.*, *Plaintiffs-Appellants*, vs. Milk Wagon Drivers' Union, Local 753, *et al.*, *Defendants-Appellees*.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

6900

Now this day come the parties by their counsel and this cause comes on to be heard on the transcript of the record and briefs of counsel and on oral argument by Mr. Arthur R. Seelig, counsel for Appellants, and by Mr. Abraham W. Brussell, counsel for appellees, and the Court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the twenty-ninth day of November, 1939, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said Opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 6900. OCTOBER TERM AND SESSION, 1939.

LAKE VALLEY FARM PRODUCTS, INC., a corporation; LAKE VIEW COOPERATIVE OF WATERTOWN, WISCONSIN, etc., *et al.*,

Plaintiffs-Appellants,

vs.

MILK WAGON DRIVERS' UNION, LOCAL 753, *et al.*,

Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

November 29, 1939.

Before EVANS, SPARKS and TREANOR, *Circuit Judges.*

SPARKS, *Circuit Judge.* This action in equity was instituted by appellants, and Josef Wagner, doing business as Wagner Dairy Products. It sought to restrain appellees from picketing, and from the commission of acts of violence and boycott alleged by appellants to be in restraint of interstate trade and in violation of the Sherman Anti-Trust Law and the Clayton Act. Appellees filed a joint answer which in effect was a general denial and contained other affirmative matters. The issue of injunction was referred to a Master in Chancery, and his report recommended the dismissal of the complaint for lack of jurisdiction. A hearing was had upon appellants' exceptions to this report, and after making special findings of facts, and rendering its conclusions of law thereon, the District Court entered a decree confirming the report, and ordering dismissal for want of jurisdiction and for want of equity.

The findings are substantially as follows: The plaintiffs

are the Lake Valley Farm Products, Inc., an Illinois corporation of Chicago, engaged in processing and distributing milk and dairy products in Chicago; Lake View Co-operative of Watertown, Wisconsin, an organization of Wisconsin farmers; Josef Wagner, doing business as Wagner Dairy Products in Cook County, Illinois; and Amalgamated Dairy Drivers, Local Industrial Union No. 819, a voluntary unincorporated association with its headquarters in Chicago. Before the findings were filed, Wagner, by leave of court, withdrew as party plaintiff.

The defendants are the Milk Wagon Drivers Union of Chicago, Local 753, a voluntary unincorporated association with headquarters in Chicago; Robert G. Fitchie, James Kennedy, Steve Sumner, F. Ray Bryant, Alvin F. Richards, Joseph L. Patterson and Fred C. Dahms, who are officers and trustees of the defendant union.

The Farm Products Company purchases its daily requirements of fluid milk from the plaintiff Co-operative, which receives its product from farmers in Wisconsin, who deliver their milk to the plant of the Co-operative where it is loaded on motor trucks and transported over the public highways to the Farm Products Company in Chicago, which pasteurizes and bottles the milk, after which it is sold by the Farm Products Company to various persons referred to as "vendors," who severally own and operate their own automobile truck equipment. They in turn, after purchasing the milk and cream from the pasteurizing plant, distribute it to various stores which in turn sell it to the general public on a cash and carry plan. These "vendors" are not members of the defendant union.

The plaintiff union was organized on March 1, 1938, and maintains executive offices in Chicago. Its members are residents and citizens of Illinois.

The defendant union was organized in 1902 and since that time has unionized the majority of drivers delivering milk and other dairy products, and its headquarters are in Chicago. All the individual defendants are residents and citizens of Illinois.

Over forty per cent of the milk and over seventy-five per cent of the cream sold in Chicago comes from points outside of Illinois. It is commingled, sold in competition with, and is indistinguishable from the milk and cream which is produced in Illinois. The pasteurization and bottling require a very short time. Nothing is added to or taken from the milk and cream by such process and only a few hours

elapse from the time it leaves the point of origin in Wisconsin until it is lodged in the retail stores.

The Farm Products Company is a cut-rate dairy in that it distributes its milk through retail stores by cash and carry sale, and at prices substantially less than the generally prevailing price for milk delivered by the dairy to the home. Because of the relatively large amount of milk delivered to each retail store, the cost of such delivery is substantially less than the cost of delivering milk on a retail route to the doorstep of the ultimate consumer.

The growth of the cut-rate milk business in Chicago has been accompanied by violence to the distributing stores. They have had their windows broken, they have been bombed, set afire, they have been submitted to stench bombs and to other acts of violence. Cut-rate dairy plants have been bombed, have had machinery smashed, and their delivery trucks have been seized and destroyed, and they have been submitted to other acts of violence.

Picketing by the defendant union has all taken place at and in front of stores selling the products of the plaintiff dairy, and no picketing has taken place at the plaintiff dairy plant. In some instances deliveries of other necessary food products into stores selling plaintiffs' dairy products have ceased.

Fifteen to twenty stores distributing the products of plaintiff dairy were lost in the month preceding the filing of the bill of complaint; twenty-five to thirty stores were similarly lost since the commencement of the action; more than one hundred of such stores have been picketed, and there is no way to ascertain the number of consumer patrons lost by the acts of the defendant. No labor dispute exists between plaintiff dairy and its workers.

The court in its last finding says that it adopts by reference the various findings of fact made by the Master in his report. This report is rather voluminous and contains much that cannot be considered as findings of fact. We find nothing additional in this report which is material to the issues passed upon by the District Court, except perhaps that all of the employees of the plaintiff dairy are members of the plaintiff union and have designated that union as their sole representative in dealing with the dairy. The Master further found that the plaintiffs had not established the fact that they had no adequate remedy at law and had not alleged or proved that the public officers

charged with the duty to protect their property were unable or unwilling to furnish adequate protection.

He further used the following language in his findings:

> "It also appears from the evidence before the Master that certain of the cut-rate milk stores that handled the products of the Plaintiff Dairies were picketed by members of the Defendant Union; that such picketing was usually indulged in for a number of days during which time said pickets sought to induce the offending storekeepers to discontinue the purchase of such milk from the Plaintiff Dairies; that in several instances where their efforts were unsuccessful said pickets were withdrawn and within a few days thereafter, usually during the night the store of the storekeeper (some of whom were poor women struggling to make a living) was either bombed or bricks were thrown through the plate glass windows of such stores or other acts of violence were committed. To request the Master to conclude and find, in the absence of proof of the identity of the guilty culprits, that there was no connection between such acts of violence and the Defendant Union, or some of its members, is to overtax the credulity of the Master.
>
> "The Master cannot condone or too severely condemn the resort to such malicious and cowardly conduct in support of any cause. Such lawless conduct has no place under our form of Government and the few lawless, radical union leaders or members who resort thereto are not only a blight upon the righteous cause of honest labor but reflect discredit upon our country and upon our American civilization as well."

The District Court concluded that it had no jurisdiction on the ground of diversity of citizenship; that the actions of the defendants did not constitute a violation of the Sherman Anti-Trust Law and the Clayton Act; that the defendants' actions did not constitute an unlawful conspiracy, and did not effect an unlawful monopoly as defined by the two Acts last referred to; that the activities of the defendants did not constitute an unlawful secondary boycott or deprive plaintiffs of rights guaranteed to them under the Constitution and laws of the United States or of the State of Illinois; that under the circumstances presented a labor dispute existed as defined by the terms of the Norris-LaGuardia Act; that the court was without jurisdiction to grant the injunctive relief or any part of the relief prayed for by the plaintiffs; that the plaintiffs were not entitled

to any of the relief prayed for in the bill and that the equities of the case were with the defendants.

The decree immediately followed dismissing the cause of action as to Wagner, with prejudice, and overruling the other plaintiffs' exceptions and their application for preliminary and permanent injunction. The decree further dismissed appellants' bill of complaint both for want of jurisdiction, and for want of equity. The language of the conclusions of law and the decree indicates without doubt that the court passed upon all the questions presented, but we have great doubt whether all should have been passed upon. For instance, after the court found that it was without jurisdiction, it is not clear why it proceeded to pass upon the merits. Of course there was no jurisdiction on account of diversity of citizenship, but if there was a violation of the Sherman Anti-Trust Law and the Clayton Act with respect to interstate commerce, there would still be jurisdiction of the cause, and that would carry with it the right to decide rightly or wrongly all questions therein involved. Whether or not there was a labor dispute within the purview of the Norris-LaGuardia Act, or whether there was a conspiracy or a secondary boycott, would seem to us not to be determinative of the question of jurisdiction providing interstate commerce was involved within the purview of all the acts referred to. The bill of complaint was treated as sufficient by all parties except that appellees claimed that both the bill and the evidence showed that interstate commerce was not affected. This contention of course was denied by appellants, and it was the duty of the court to pass upon this question in order to determine whether it had jurisdiction of the subject matter. This it did, holding that it had no jurisdiction. We assume, therefore, that this ruling was based on the ground that interstate commerce was not affected. If this were true, the court was without jurisdiction to pass upon the merits of the other questions presented. If, however, interstate commerce was involved, as alleged, the mere fact that the Sherman or the Clayton Act was not violated, or the Norris-LaGuardia Act not followed, would not defeat the court's jurisdiction to determine those matters, for jurisdiction presupposes the right to decide a question either rightly or wrongly.

Under the facts found, it is clear that there is an actual flow of milk in interstate commerce from the farm-receiving station in Wisconsin, through the plaintiff dairy into the retail cut-rate stores in Chicago. It is equally

clear from the facts found that appellees' activities did seriously burden and affect the distribution of this milk by the stores to their cash and carry customers. In the light of these facts it is maintained by appellants that the court erred in its conclusions of law that the actions of the defendants did not burden or affect interstate commerce, and for that reason did not violate the anti-trust laws. The Master and counsel for appellees seem to have proceeded on the theory that the milk came to rest in the cut-rate stores and thereby ceased to flow in interstate commerce and for that reason the acts complained of did not constitute an interference with interstate commerce within the purview of the anti-trust laws. The findings and conclusions of the court do not specifically mention this reason as a basis for its conclusion, but inasmuch as it adopts the findings of the Master by reference, we assume that the bases of its conclusions are the same as those of the Master. Both seem to have relied upon the "stream of commerce" doctrine which is quite familiar in the application of federal and state taxes. It would seem, however, that this test is not to be used in anti-trust cases, for there the point at which the stream or current of interstate commerce ceases is seldom if ever involved, but the real controversy is the effect of the acts complained of upon interstate commerce. In *Local 167, I. B. T.* v. *United States*, 291 U. S. 293, there was a combination of wholesalers of poultry in New York City to increase the price of and monopolize the wholesale trade in poultry purchased by them from commission men to whom such poultry was shipped from other states. The combination was held to be in restraint of interstate commerce in violation of the Sherman Act, although the purpose was made effective by acts committed within the state after the interstate transportation of the poultry had terminated. The Court said: "The evidence shows that they and other defendants conspired to burden the free movement of live poultry into the metropolitan area. It may be assumed that some time after delivery of carload lots by interstate carriers to the receivers the movement of the poultry ceases to be interstate commerce. (Citing cases.) But we need not decide when interstate commerce ends and that which is intrastate begins. The control of the handling, the sales and the prices at the place of origin before the interstate journey begins or in the State of destination where the interstate movement ends may operate directly to restrain

and monopolize interstate commerce. (Citing cases.) The Sherman Act denounces every conspiracy in restraint of trade including those that are to be carried on by acts constituting intrastate transactions. (Citing cases.)" Again the Court said: "And, maintaining that interstate commerce ended with the sales by receivers to marketmen, appellants insist that the injunction should only prevent acts that restrain commerce up to that point. But intrastate acts will be enjoined whenever necessary or appropriate for the protection of interstate commerce against any restraint denounced by the Act." The same principle of law was followed in *Labor Board* v. *Jones and Laughlin*, 301 U. S. 1; *Santa Cruz Packing Company* v. *N. L. R. B.*, 303 U. S. 453; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601; and *United States of America* v. *Rock Royal Co-Operative, Inc.* (June 5, 1939). All these cases followed the doctrine as set forth in *Montague & Company* v. *Lowry*, 193 U. S. 38.

In view of these decisions, and under the findings of the court and the Master, we think it is clear that interstate commerce was involved and was quite seriously affected and burdened by the picketing activities of the defendants in and about the stores that sold the milk in controversy. We find no conflicting testimony as to this fact. We are further of the opinion that the uncontradicted evidence and findings disclose that the Sherman Anti-Trust Law and the Clayton Act were clearly violated.

It is contended by appellees, however, that there is no evidence of conspiracy To prove a conspiracy, it is not necessary to establish it by direct testimony that a precise agreement was entered into by the parties accused. In most cases of that character this would be impossible to do, and for this reason a conspiracy may be safely based upon circumstantial evidence if the circumstances are sufficiently convincing. Everyone is presumed to intend the natural consequences of his acts. Here the picketing activities of the defendants and the results thereof were admitted. The picketing occurred only at the stores, and its admitted object was to induce the storekeepers not to sell the milk. This object was successfully attained and the result was due to the united and confederated actions of these defendants. The immediate result of their accomplishments in this respect was to retard the flow of the milk in interstate commerce from Wisconsin to Illinois. This was the natural consequence of their picketing activities and they were bound to know it.

Indeed, there was no claim by the defendants that they were not fully cognizant of all these facts, and for these reasons we think their acts did constitute an unlawful conspiracy within the purview of the Sherman and the Clayton Acts.

The record discloses, and it is not denied, that the defendant union controls the distribution of practically all the milk that is sold in Chicago. Its only competitors of any consequence are these cut-rate distributors, and if they were eliminated from the field it is not denied that defendants' union for all practical purposes would have a complete monopoly over the distribution of milk in this city. It is clear that this was the object of the defendants and this object was the sole cause of this controversy.

It is contended by appellants that no labor dispute was present in this controversy, and that the acts of the defendants, which are here sought to be restrained, constitute an unlawful secondary boycott designed to destroy the business of the plaintiff dairy. Whether there was a labor dispute is to be determined by the Norris-LaGuardia Act, 29 U. S. C. A. sections 101-115. Subsections (a), (b) and (c) of section 113 are immediately involved here.[1] From the terms of this Act, it would

1. "(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

seem clear that before a labor dispute can be said to exist, there must be an honest issue involved and there must be persons capable of being organized. It is appellants' contention that neither of these elements exists in the present case. It is not denied that the "vendors" referred to in the findings are independent contractors and are not in the employ of the dairy. They buy and sell for their own profit and are not salaried workers. It is conceded also that the owners or managers or employees of the stores which sell the milk to the ultimate consumers are not employees of the dairy or of the "vendors" and none of them are eligible to membership in the defendant union. The defendant union is a craft union for milk wagon drivers who are employees of dairies. A study of this record, including the articles of agreement used between the defendant union and its subscribing dairies, leaves no room for doubt that these "vendors" in their present occupation, or any like occupation, would not be acceptable as members in the defendant union. It is true that some, and perhaps all of them, have been solicited for membership in the defendant union, but such solicitation was upon the condition that they would cease handling cut-rate milk as "vendors" or as employees of the plaintiff dairy, while it was thus engaged. Under these conditions we think it cannot be fairly said that there is a good faith labor issue involved between the defendant union and either the dairies' employees or the "vendors" or the stores. Especially is this true when we consider the fact that the dairies' employees are organized as members of a well-recognized union, which with their consent is acting as their representative in matters dealing with their employers.

A study of this entire record is quite convincing of the fact that this entire controversy is over the question of the sale of cut-rate milk and the "vendor" system. There is no finding that these "vendors" are not receiving sufficient remuneration for their labor, or that their conditions of labor are not what they should be. The evidence is quite convincing to the contrary. In any event, it would seem that the defendant union is in no position to raise those questions as to the "vendors," who are independent contractors, and who in their present condition are not eligible for membership in the defendant union. It seems clear to us that there is no labor controversy involved here.

Moreover, we think it is clear from the findings and from the undisputed evidence in this case that the appellees' picketing activities constitute a secondary boycott, which is an unlawful activity, of which appellees could not avail themselves even though a labor dispute were involved. See *Duplex Printing Press Company* v. *Deering*, 254 U. S. 443; *Meadowmoor Dairies, Inc.* v. *The Milk Wagon Drivers Union of Chicago, No. 753*, 371 Ill. 377. The latter case deals with the same questions here presented, except as to the federal questions, only one of which is presented, and it also involves the same defendant union. It construes the Illinois Injunction Act, which in many respects is quite similar to the analogous federal Acts. The opinion is very well considered, and we are in accord with the conclusions there reached in so far as they are here applicable.

It is contended by appellees, however, that the prevention of peaceful picketing of the cut-rate stores would be a violation of the constitutional right of free speech, although such acts might be considered as a secondary boycott. We do not understand this to be the law. The same question was presented in the *Meadowmoor* case, *supra*, and it was decided adversely to appellees' contention. In that case certiorari was sought in the United States Supreme Court on that particular question, and certiorari was denied. This ruling of the Illinois Supreme Court is supported by *Aikens* v. *Wisconsin*, 195 U. S. 194.

The Master found that appellants had not established the fact that they had no adequate remedy at law, and that there was no proof that the public officers charged with the duty to protect appellants' property were unable or unwilling to furnish that protection. Aside from the procedural requirements of the Norris-LaGuardia Act, we think it is clear from the undisputed evidence that appellants had no adequate remedy at law. Inasmuch as we hold that there was no labor dispute involved, appellants were not authorized or required to proceed under that Act. With respect to the ability of the police officers to cope with the situation, we think it is clear from the number of stores involved, and the magnitude and seriousness of the activities which had continued for several years, that the police officers were unable to control the situation.

Without any intention to criticize the form of the court's findings, it is difficult to ascertain the precise reasons for

the rulings. From the Master's report, which the court adopts by reference as a part of the findings, it is quite likely that all of these rulings were based upon the finding that interstate commerce was neither involved, burdened, nor affected. If we should accept this finding as true we could readily approve the result, for the court would have been without jurisdiction and the appellants would not be entitled to the relief they asked. Again, if jurisdiction were conceded and there was a labor dispute involved, then it is quite doubtful if appellants could recover because they have not in every respect complied with the requirements of the Norris-LaGuardia Act. Holding as we do that the court had jurisdiction, we must reverse the order of the court which holds there was no jurisdiction, and in view of our holding that there was no labor dispute involved, and that the acts complained of amounted to an illegal secondary boycott, we must likewise reverse for those reasons.

In view of these conclusions we think the other conclusions of law, except as to the diversity of citizenship, are erroneous. The decree is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

TREANOR, C. J., Dissenting. I believe that the District Court correctly found as a fact and stated as a conclusion of law that the defendants' activities did not burden or affect interstate commerce within the prohibitions of the Federal Anti-Trust laws. The correctness of such finding and conclusion turns upon the often recognized distinction between direct and indirect effect of intrastate activities upon interstate commerce. The Supreme Court has pointed out that there is a necessary distinction, and that although "the precise line can be drawn only as individual cases arise, * * * the distinction is clear in principle"; and that Court has declared that this "distinction between direct and indirect effects of intrastate transactions upon interstate commerce must be recognized as a fundamental one, essential to the maintenance of our constitutional system"; and that "otherwise * * * there would be virtually no limit to the federal power, and for all practical purposes we should have a completely centralized government."[1]

In the Schechter case the defendants were engaged in

1. *Schechter Corporation* v. *United States*, 295 U. S. 495, 546, 548.

the business of slaughtering chickens and selling them to retailers. They bought their fowls from commission men in the market where most of the supply was shipped in from other states. When the defendants had made their purchases the poultry was trucked to their slaughter houses in Brooklyn for local disposition through retailers. The Supreme Court said that the interstate transaction in relation to that poultry then ended; and that neither the slaughtering nor the sales by defendants to retail dealers and butchers, who in turn sold directly to consumers, were transactions in interstate commerce. The Court in its opinion further pointed out that the poultry had arrived and had become commingled with the mass of property in the state, and that it was not held, used or sold by defendants in relation to any further transactions in interstate commerce and was not destined for transportation to other states. Consequently, the Court concluded that "decisions which deal with a stream of interstate commerce—where goods come to rest within a State temporarily and are later to go forward in interstate commerce—and with the regulations of transactions involved in that practical continuity of movement, are not applicable here." (P. 543.)

In the instant case the "current" or "flow" of interstate commerce ended in the plant of the plaintiff, Lake Valley Farm Products Inc. where the milk which came from outside the state of Illinois was commingled with milk produced in Illinois and processed for local consumption. The milk then was "held solely for local disposition and use * * *. It was not held, used, or sold by defendants (plaintiffs) in relation to any further transactions in interstate commerce and was not destined for transportation to other States."[2] The subsequent activities of the defendants which were directed to the local sale and distribution of milk could not interfere with the "flow" or "current" of interstate commerce in milk. Our question, then, becomes one of whether defendants' activities, which were strictly intrastate, were such that their effect was substantially and directly to restrain and burden the shipment and movement of milk from Wisconsin to Illinois while the milk unquestionably was in interstate commerce.

In the opinion of the Schechter case the Supreme Court pointed out that the case before it was not of the same sort as a prosecution of conspiracy to monopolize or re-

2. *Schechter* v. *United States*, *supra*, p. 543.

strain interstate commerce in violation of the Anti-Trust Act; but for purposes of differentiating between direct and indirect effect of intrastate acts the court had recourse to cases which involved the application of the Anti-Trust Act. The following statement is of special interest in view of the facts of the instant case (p. 547):

"Where a combination or conspiracy is formed, with the intent to restrain interstate commerce or to monopolize any part of it, the violation of the statute is clear. *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295, 310. But where the intent is absent, and the objectives are limited to intrastate activities, the fact that there may be an indirect effect upon interstate commerce does not subject the parties to the federal statute, notwithstanding its broad provisions. This principle has frequently been applied in litigation growing out of labor disputes."

The Supreme Court's discussion in the Schechter case of the two cases of *Local 167* v. *United States*[3] and *Levering & Garrigues Co.* v. *Morrin*[4] is most instructive for the problem of distinguishing between direct and indirect effect of intrastate activities of labor organizations upon interstate commerce. The case of *Local 167* v. *United States* involved a suit to enjoin a conspiracy to restrain and monopolize interstate commerce in violation of the Anti-Trust Act. In the trial of that case it was shown that marketmen, teamsters and slaughterers had conspired to burden the free movement of live poultry into the metropolitan area in and about New York City. Marketmen had organized an association, had allocated retailers among themselves, and had agreed to increase prices. To accomplish their objects, large amounts of money were raised by levies upon poultry sold, men were hired to obstruct the business of dealers who resisted, wholesalers and retailers were spied upon and by violence and other forms of intimidation were prevented from freely purchasing live poultry. Teamsters refused to handle poultry for recalcitrant marketmen and members of the shochtim union refused to slaughter. The Supreme Court said that the evidence disclosed that the defendants had conspired to burden the free movement of poultry into the metropolitan area of New York City and concluded that the "interference by appellants and others with the unloading, the transportation, the sales by marketmen to retailers, the

3. 291 U. S. 293.

4. 289 U. S. 103.

prices charged and the amount of profits exacted operate substantially and directly to restrain and burden the untrammeled shipment and movement of the poultry while unquestionably it is in interstate commerce." The Court further stated that it was not necessary to decide when interstate commerce ended and that which is intrastate began, since it was clear from the evidence that the activities of the defendants did substantially and directly restrain and burden the untrammeled shipment and movement of the poultry at a time when it unquestionably was in interstate commerce.

In *Levering etc.* v. *Morrin, supra,* suit was brought in a Federal District Court to enjoin the commission of certain acts by the defendants, the acts complained of being alleged to interfere unlawfully with interstate commerce and to be a violation of the Federal Anti-Trust Acts. The question presented to the Supreme Court was whether the allegations of the bill disclosed the commission of acts which unlawfully interfered with interstate commerce and constituted a violation of the Federal Anti-Trust Acts. It was stated in the opinion that the prayer for relief primarily was based upon the averment that the petitioners were engaged in fabricating and erecting structural iron and steel; that they were and had been for a long time, operating such business on the open shop method in relation to their employment of labor; that they had large contracts for the construction of work in the City of New York; that respondents were organizations of labor and officers and agents thereof who had conspired, and were attempting to compel petitioners and others to employ exclusively union labor in their building operations; that in pursuance of the conspiracy respondents had called out on strike petitioners' union employees, and conducted boycotts, and undertaken other injurious interferences which particularly were set forth in the bill. The bill also contained averments to the effect that all the steel used by the petitioners in the City of New York was transported from other states and that the purpose and intent of respondents was to prevent the use of said steel in buildings to be erected by petitioners; that the effect of the success of respondents would be, among other things, to destroy the interstate traffic of petitioners in steel.

After a recital of the foregoing factual allegations of the bill the Supreme Court stated: "All this, however, is no more than to say that respondents' interference with the erection of the steel in New York will have the effect of in-

terfering with the bringing of the steel from other states. Accepting the allegations of the bill at their full value, it results that the sole aim of the conspiracy was to halt or suppress local building operations as a means of compelling the employment of union labor, not for the purpose of affecting the sale or transit of materials in interstate commerce. *Use* of the materials was purely a local matter, and the suppression thereof the result of the pursuit of a purely local aim. Restraint of interstate commerce was not an object of the conspiracy. Prevention of the local use was in no sense a means adopted to effect such a restraint. It is this exclusively local aim, and not the fortuitous and incidental effect upon interstate commerce, which gives character to the conspiracy. * * * If thereby the shipment of steel in interstate commerce was curtailed, that result was incidental, indirect and remote, and, therefore, not within the anti-trust acts, as this court, prior to the filing of the present bill, had already held. *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 410-411; *United Leather Workers* v. *Herkert & Meisel Trunk Co.*, 265 U. S. 457. The controlling application of these cases to the present one is apparent from the review of them in the later case of the *Industrial Assn.* v. *United States*, 268 U. S. 64, 77-78, 80-82."

The discussion and reasoning of the Supreme Court in the two foregoing cases, *Local 167* v. *United States* and *Levering etc.* v. *Morrin*, furnish a helpful, if somewhat general guide for our appraisal of the intrastate activities of the defendant labor union. In the former case the defendants included approximately all of the groups and individuals who handled poultry from the moment it was delivered from interstate transportation to commission men in New York to its final sale to consumers. The facts disclose an organized effort to dominate the poultry business in the New York City area by securing control of prices and profits in the business and control of the unloading, transportation and sales of all poultry coming into that area through the channels of interstate commerce, such domination and control beginning at the very instant of the transfer from interstate to intrastate transportation. The Supreme Court summed up the factual situation and its obvious effect in the following statement: "The interference by appellants and others with the unloading, the transportation, the sales by marketmen to retailers, the prices charged and the amount of profits exacted operate substantially and directly to restrain and burden the untrammeled

shipment and movement of the poultry while unquestionably it is in interstate commerce."

In the Levering case the activities of defendants were intended to halt or suppress building operations as a means of compelling the employment of union labor and not "for the purpose of affecting the sale or transit of materials in interstate commerce;" although it was obvious that the activities of the defendants were in fact indirectly affecting interstate commerce in steel. But as stated in the opinion of the Supreme Court, the "*use* of the materials was purely a local matter, and the suppression thereof the result of a purely local aim." The Supreme Court further stated that it was this exclusively local aim and not the "fortuitous and incidental effect upon interstate commerce" which gave "character to the conspiracy," and that any curtailment of the shipment of steel in interstate commerce was an incidental, indirect and remote result and not within the prohibitions of the Anti-Trust Acts.

In my opinion the facts of the instant case bring it within the reasoning and holding of the Supreme Court in *Levering* v. *Morrin.*

There is no evidence of an actual intent on the part of defendants to interfere with interstate commerce. And there is no such direct and substantial effect upon interstate commerce resulting from defendants' conduct as to furnish a necessary inference of the existence of the intent.[5] The sole aim of the defendants in their interference with the local sale and distribution of milk was to secure a method of sale and distribution which would be more advantageous to them; and, in the words of the Supreme Court in the opinion in the Levering case, "it is this exclusively local aim and not the fortuitous and incidental effect upon interstate commerce, which gives character to the conspiracy;" and if as a result of the defendants' activities the shipment of milk in interstate commerce was curtailed "that result was incidental, indirect and remote, and, therefore, not within the anti-trust acts."

The "local aim" and the results of the activities of the defendants, both in the Levering case and in the instant case, contrast sharply with those of the defendants in the Local 167 case. There the aim, and the actual result of the organized activities of the defendants, was to directly intercept and control substantially all of the poultry com-

5. See the two Coronado cases, 259 U. S. 344 and 268 U. S. 295.

ing into the New York City area in the channels of interstate commerce and to intercept the "current" of commerce in poultry at the very moment of transition from interstate to intrastate commerce.

In *Blankenship* v. *Kurfman*[6] this Court had occasion to pass upon the contention that certain intrastate activities of defendant unions and members thereof interfered with interstate commerce and amounted to a conspiracy or combination in violation of the Sherman Anti-Trust Act. It was pointed out in the opinion in that case that cases arising under the National Labor Relations Act do not involve the problem of determining the existence of a conspiracy or combination in restraint of commerce, to the existence of which it is essential that there be an intent to restrain or burden interstate commerce.

We are not concerned in this case with the question of the power of Congress under the Commerce Clause to regulate intrastate activities of labor organizations when these activities affect, or tend to affect, indirectly the current of interstate commerce. No doubt congressional findings and declaration of policy similar to those of the National Labor Relations Act, but directed to the intrastate activities of employees in their relation to commerce, would supply a basis for valid legislation aimed at the regulation of these activities. But the reasoning and holding in the *Schechter* case and in the *Levering* case, *supra*, surely raise doubt of the validity of the application of any such legislation to facts such as are found in the instant case. But no such legislation has been enacted and this suit is controlled by the decisions which have construed and applied the Anti-Trust Acts.

The District Court, as a further ground for refusing to grant the requested injunction, concluded that the facts of the controversy presented "a case involving or growing out of a labor dispute" within the terms of the Norris-LaGuardia Act. Assuming that the facts made "a case" within the terms of the Norris-LaGuardia Act, the court properly refused to grant the injunctive relief since the evidence did not disclose any basis for findings which the Act requires as a condition precedent to the exercise of the court's power to issue restraining orders and injunctions.

The language of the Act forbids the granting of a restraining order or injunction, except upon conditions set out in the Act, "in a case involving or growing out of a

6. 96 Fed. 2nd. 507.

labor dispute," and in a subsequent section expressly defines the term "a case involving or growing out of a labor dispute." The congressional intent as evidenced in Section 13 (a) (b) and (c) of the Act[7] is to define two types of cases "involving or growing out of a labor dispute." The first type is defined in terms of the persons who are disputing, the language being that "a case shall be held to involve or grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft or occupation; or have direct or indirect interests therein; or who are employees of the same employer or who are members of the same or an affiliated organization of employers or employees * * *." And it is further provided that it is immaterial whether the dispute is between employer or employees, or between employers and employers, or between employees and employees. In the foregoing type of "case involving or growing out of a labor dispute" there is no express limitation by reason of the subject matter of the dispute.

The last grammatical clause of Section 13 (a) defines the second type of case in terms of the nature of the "labor dispute" as well as in terms of "persons participating in the labor dispute." To fall within this type of "case involving or growing out of a labor dispute" the case must involve conflicting or competing interest in a "labor dispute," as this term is subsequently defined in Section 13 (c); and the "labor dispute" must involve "persons participating or interested," as that term is subsequently defined in Section 13 (b). In this second type of "case involving or growing out of a labor dispute" the subject matter of the dispute is limited to a particular kind of controversy, but the classes of persons who may be involved include persons whose interest is neither that of an employer nor of an employee. And in *New Negro Alliance* v. *Grocery Co.*[8] the Supreme Court held that the case was one "involving or growing out of a labor dispute" although the relation of employer and employee did not exist between the adverse parties in the case and although the defendants were not engaged in any business competitive with that of the plaintiff and even though the officers, members, or representatives of the defendant association were not engaged in the same business or occupation as the plaintiff employer or its employees. Also the Supreme Court held that the dispute was a labor dispute within the defini-

7. Act of March 23, 1932, C. 90, 47 Stat. 70, 73, 29 U. S. C. A. Sec. 113.

8. 303 U. S. 552.

tion of Section 13 (c) regardless of the fact that it did not involve terms and conditions of employment in the sense of wages, hours, unionization or betterment of working conditions.

In view of the Supreme Court's interpretation of the term "labor dispute" as defined in Section 13 (c), and its interpretation of "persons participating or interested," as defined in Section 13 (b), I believe that the facts of the instant case bring it within the second type of "case involving or growing out of a labor dispute."

Also I think that this case comes within the first type of case referred to above. It involves persons who are "engaged in the same industry, trade, craft or occupation" and is a dispute between the plaintiffs, consisting of employers and one association of employees, a C. I. O. local, and the defendants, another association of employees, an A. F. of L. local. As indicated above, I do not think that the term "labor dispute" as used in Section 13 (a) is limited by the definition of "labor dispute" in Section 13 (c). The primary intent of Section 13 (a) (b) and (c) is to define two types of cases "involving or growing out of a labor dispute," and it is only as an incident to the expression of the primary intent that "labor dispute" and "persons participating or interested" are defined. The terms "labor dispute" and "persons participating or interested" are defined in (b) and (c) merely for the purpose of clarifying the definition of the second type of case which is defined as a case which "involves any conflicting or competing interests in a 'labor dispute' * * * of 'persons participating or interested' therein * * *." The possible kinds of disputes which can be involved in this latter type of "case" is less than those of the first type of case because of the limitation imposed by the restricted definition of "labor dispute" in 13 (c). But the classes of persons who may be involved are less restricted than in the first type of case because of the broad terms of the definition of "persons participating or interested."

I agree with the District Court's conclusion that the facts present "a case involving or growing out of a labor dispute" as such "case" is defined in the Norris-LaGuardia Act.

Endorsed: Filed November 29, 1939. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the twenty-ninth day of November, 1939, the following further proceedings were had and entered of record, to-wit:

Wednesday, November 29, 1939.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.

Lake Valley Farm Products, Inc., a corporation; Lake View Co-operative of Watertown, Wisconsin, an Agricultural Co-operative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local, Industrial Union No. 819,

Plaintiffs-Appellants,

6900 *vs.*

Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffers, Stablemen and Helpers of America, a voluntary association; Robert C. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson,

Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this Court that the Decree of the said District Court in this cause be, and the same is hereby reversed with costs; and that this cause be, and the same is

hereby remanded to the said District Court for further proceedings not inconsistent with the Opinion of this Court.

And afterwards, to-wit: On the fourteenth day of December, 1939, there was filed in the office of the Clerk of this Court, a Petition for a Rehearing, which said Petition for a Rehearing is in the words and figures following, to-wit:

No. 6900 381

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

LAKE WALLEY FARM PRODUCTS, INC., a corporation; AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION No. 319, a voluntary unincorporated association; LAKE VIEW CO-OPERATIVE OF WATERTOWN, WISCONSIN, an agricultural cooperative corporation of the State of Wisconsin,

Plaintiffs-Appellants,

vs.

MILK WAGON DRIVERS UNION, LOCAL 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, a voluntary unincorporated association; ROBERT G. FITCHIE, JAMES KENNEDY, STEVE SUMNER, FRED C. DAHMS, F. RAY BRYANT, ALVIN P. RICHARDS and JOSEPH L. PATTERSON,

Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Honorable Philip L. Sullivan, Judge Presiding.

Petition for Rehearing by Appellees.

DAVID A. RISKIND,
ABRAHAM W. BRUSSELL,
Chicago, Illinois,
Counsel for Defendants-Appellees

U. S. C. C. A. 7
FILED
DEC 14 1939
FREDERICK G. CAMPBELL
CLERK

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

LAKE VALLEY FARM PRODUCTS, INC., a corporation; AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION No. 819, a voluntary unincorporated association; LAKE VIEW CO-OPERATIVE OF WATERTOWN, WISCONSIN, an agricultural cooperative corporation of the State of Wisconsin,

Plaintiffs-Appellants,

vs.

MILK WAGON DRIVERS UNION, LOCAL 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, a voluntary unincorporated association; ROBERT G. FITCHIE, JAMES KENNEDY, STEVE SUMNER, FRED C. DAHMS, F. RAY BRYANT, ALVIN F. RICHARDS and JOSEPH L. PATTERSON,

Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Honorable Philip L. Sullivan, Judge Presiding.

Petition for Rehearing by Appellees.

Now come Milk Wagon Drivers Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary unincorporated association; Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richard and Josepn L. Patterson, Defendants-Appellees, by their attorneys, David A. Riskind and Abraham W. Brussell, and respectfully petition that this court grant a re-

hearing of the above entitled cause, and that upon further consideration the decision of this honorable court heretofore entered on November 29th, A. D. 1939 may be vacated and the judgment of the District Court be affirmed.

In support of said petition your petitioners respectfully state as follows:

I.

The court erred in its interpretation of the facts.

This court has disregarded the findings of fact made by the Master in his Finding of Facts (R. pp. 203-223), especially Findings Nos. 28-44. In this Petition for Rehearing we are not permitted to set out the facts in detail, but we respectfully urge that this court reconsider the Findings of Facts made by the Master.

In addition, this court has disregarded the specific facts set out in our brief in pages 8-11. These facts were in the main undisputed. For purposes of clarifying the facts shown by the Record we filed a Supplemental Record in this court. We made specific references to facts shown in Supplemental Record at the following pages: 5-8, 10-11, 21, 50-52, 57, 59-61, 61-62, 63, 67-68.

We respectfully suggest that a reconsideration of such references by this Court will conclusively show that the defendant Union was concerned with the "hours and wages evils" of the vendor system, and was *not* concerned with the selling of cut-rate milk as such that was sold by 119 of 120 Union Dairies in the City of Chicago (Suppl. R. p. 68).

Further, plaintiffs did not dispute that the wages paid by vendors to their helpers were considerably less than

the wages earned by members of defendant Union. This undisputed fact is not considered by the court.

II.

Errors of Law.

With respect to the several theories of law adopted by the majority of this court, we point out that the majority and minority opinions of this court disclose that the majority opinion *adopts* the law urged by the *plaintiffs* herein, and the minority opinion adopts the law urged by the *defendants* herein. It is, of course, our contention that the minority opinion is correct in its view of the law, and that the majority opinion has erred in its statement of the law.

It is not the function of this Petition for Rehearing to *reargue* all the theories of law adopted by the majority opinion for that would be in substance repeating the contentions advanced in our original brief. But we still urge that *such* contentions are correct statements of the law.

On some of these issues of law we call the court's attention to decisions handed down within the last three weeks which tend to support our analysis and tend to rebut the analysis advocated by plaintiffs and adopted by the majority of this court. For purposes of brevity, we outline the legal propositions as follows:

1. The majority of this court erred in ruling that picketing of retail milk stores in Chicago constitutes a restraint of interstate commerce or trade within the meaning of the Sherman Act and the Clayton Act. See decision in *Leader, et al.* v. *Apex Hosiery Company,* decided by the Circuit

Court of Appeals for the Third Circuit, on November 29, A. D. 1939, reported in Commerce Clearing House Labor Law Service, par 18,482. Also, see our brief pp. 22-27, 91-137.

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2. The majority of this court erred in ruling that the defendants' activities constituted an unlawful conspiracy within the prohibition of the Sherman and Clayton Acts. See decision in *Leader, et al.* v. *Apex Hosiery Company,* decided by the Circuit Court of Appeals for the Third Circuit on November 29, A. D. 1939, reported in the Commerce Clearing House Labor Law Service, par. 18,482. See our brief pp. 22-27, 91-137.

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3. The majority of the court erred in ruling that the activities of the defendant constituted a monopoly in violation of the Sherman and Clayton Acts. See our original brief pp. 25-26, 111-115.

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4. The majority of the court erred in ruling that there was no labor dispute within the meaning of the Norris-LaGuardia Act. See decision in *Fur Workers' Union* v. *Fur Workers' Union,* decided by the United States Supreme Court in a *per curiam* opinion on Monday, Decemcember 11, A. D. 1939. See also our original brief pp. 12-17 and 30-76.

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5. The majority of this court erred in ruling that the existence of a so-called secondary boycott prevented the defendants from claiming the benefit of the provisions of

the Norris-LaGuardia Act. See our brief at pp. 13, 18, 20-21, 30-66, 80-90.

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6. The majority of this court erred in ruling that the defendants' constitutional right to free speech under the "due process clause of the 14th Amendment to the Federal Constitution did not permit them to conduct peaceful picketing. See *Schneider* v. *Irvington,* 84 Lawyer's Edition, 115-118, 119, 121 (decided November 22, A. D. 1939). See also our brief at pages 18-19, 76-79.

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7. In addition, we respectfully urge that the court's opinion fails to indicate that the defendants on this appeal urge that the Federal Anti-Trust Laws were not applicable to labor organizations. See our original brief at pp. 27, 28, 138. It is respectfully suggested the opinion of this court should indicate that this contention was expressly made before this court.

PRAYER.

Wherefore, for the foregoing reasons, defendants-appellees pray that this court grant a rehearing in the above entitled cause.

Respectfully submitted,

DAVID A. RISKIND,
ABRAHAM W. BRUSSELL,
Counsel for Defendants-Appellees.

Endorsed: Filed December 14, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the twenty-second day of December, 1939, there was filed in the office of the Clerk of this Court, an Answer to Petition for Rehearing, which said Answer is in the words and figures following, to-wit:

No. 6900

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

LAKE VALLEY FARM PRODUCTS, INC., a corporation; AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION No. 819, a voluntary unincorporated association; LAKE VIEW CO-OPERATIVE OF WATERTOWN, WISCONSIN, an agricultural cooperative corporation of the State of Wisconsin,

Plaintiffs-Appellants,

vs.

MILK WAGON DRIVERS UNION, LOCAL 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, a voluntary unincorporated association; ROBERT G. FITCHIE, JAMES KENNEDY, STEVE SUMNER, FRED C. DAHMS, F. RAY BRYANT, ALVIN F. RICHARDS and JOSEPH L. PATTERSON,

Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Honorable Philip L. Sullivan, Judge Presiding.

ANSWER OF APPELLANTS TO PETITION FOR REHEARING.

ARTHUR R. SEELIG,
Chicago, Illinois,
Counsel for Plaintiffs-Appellants.

U.S.C.C.A.

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

LAKE VALLEY FARM PRODUCTS, INC., a corporation; AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION No. 819, a voluntary unincorporated association; LAKE VIEW CO-OPERATIVE OF WATERTOWN, WISCONSIN, an agricultural cooperative corporation of the State of Wisconsin,

Plaintiffs-Appellants,

vs.

MILK WAGON DRIVERS UNION, LOCAL 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, a voluntary unincorporated association; ROBERT G. FITCHIE, JAMES KENNEDY, STEVE SUMNER, FRED C. DAHMS, F. RAY BRYANT, ALVIN F. RICHARDS and JOSEPH L. PATTERSON,

Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Honorable Philip L. Sullivan, Judge Presiding.

ANSWER OF APPELLANTS TO PETITION FOR REHEARING.

Now comes Lake Valley Farm Products, Inc., a corporation; Amalgamated Dairy Workers, Local Industrial Union No. 819, a voluntary unincorporated association; Lake View Co-Operative of Watertown, Wisconsin, an agricultural cooperative corporation of the State of Wisconsin, appellants, by Arthur R. Seelig, their counsel, and in answer to the petition of the appellees for rehearing, respectfully state as follows:

Endorsed: Filed December 22, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the ninth day of January, 1940, the following further proceedings were had and entered of record, to-wit:

Tuesday, January 9, 1940.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.

Lake Valley Farm Products, Inc., *et al.*, *Plaintiffs-Appellants*, *vs.* Milk Wagon Drivers' Union, Local 753, *et al.*, *Defendants-Appellees.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

6900

It is ordered by the Court that the Petition for a Rehearing of this cause, be, and the same is hereby denied.

And afterwards, to-wit: On the twelfth day of January, 1940, there was filed in the office of the Clerk of this Court, a Notice of Motion and Affidavit, which said Notice of Motion and Affidavit are in the words and figures following, to-wit:

State of Illinois, } ss.
County of Cook. }

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

Lake Valley Farm Products, Inc., *et al.*, *Appellants,*
vs.
Milk Wagon Drivers Union, etc., *et al.*, *Appellees.*
} Cause No. 6900.

NOTICE OF MOTION AND AFFIDAVIT.

To: Arthur R. Seelig,
11 So. La Salle Street,
Chicago, Illinois,
Attorney for Appellants, "plaintiffs".

Please Take Notice that on the 12th day of January, A. D. 1940, we shall file in the office of the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, and ask that he present to the Court the motion of Milk Wagon Drivers Union, etc., et al, Appellees, asking the Court to stay the mandate of the Court in the aforesaid cause pending the disposition by the United States Supreme Court of a Petition to said Court for a Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit, and in support of said motion, we offer the Affidavit of Abraham W. Brussell.

At which time and place you may appear if you so see fit.

David A. Riskind,
Abraham W. Brussell,
Attorneys for Appellees (Defendants).

Received a copy of the foregoing Notice of Motion and Affidavit therein referred to this ..... day of January, 1940.

Arthur R. Seelig,
by G. P. Braun,
Secretary,
Attorney for Appellants (Plaintiffs).

State of Illinois, }
County of Cook. } ss.

AFFIDAVIT.

Abraham W. Brussell being first duly sworn makes his oath, deposes and says that he is one of the attorneys of record for the Milk Wagon Drivers Union of Chicago, Local 753, etc., et al, Appellees in this Court, defendants in the Court below; that he is entrusted with the duty of conducting the appeal proceedings in this cause on behalf of said Appellees; that after being informed of the order of this court dated January 9, 1940, denying the Appellees' Petition for re-hearing of the judgment and order of this Court of November 23, 1939, he communicated said fact to the Appellees; that said Appellees have requested and authorized your Affiant to proceed with the preparation and filing of a Petition in the United States Supreme Court for a Writ of Certiorari from said Court to this Honorable Court; that your Affiant is ready to proceed with the preparation of the record and the petition and is filing this Motion to stay mandate of this Court in accordance with the rule in such cases made and provided; that the order and judgment of this Court of November 23, 1939, reversed the findings of the Master and the findings and decree of the trial Court herein.

Your Affiant in his opinion believes that he will be able to complete the proceedings on Certiorari and cause the Petition therefor to be filed with the Clerk of the Supreme Court of the United States within, approximately, one month and that your Affiant will proceed with said proceedings with due diligence and without delay.

Wherefore, your Affiant respectfully prays that this Court grant motion of Appellees herein to stay mandate of this Court pending disposition by the United States Supreme Court of Petition to said Court for a Writ of Certiorari to this Honorable Court.

Furthermore, Affiant sayeth not.

Abraham W. Brussell.

Subscribed and sworn to before me this 12th day of January, A. D. 1940.

Louis H. Kohn, Jr.,
Notary Public.

(Seal)

State of Illinois, } ss.
County of Cook. }

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

Lake Valley Farm Products, Inc., *et al.*,
Appellants,
vs.
Milk Wagon Drivers Union, etc., *et al.*,
Appellees.
} Cause No. 6900.

NOTICE OF MOTION AND AFFIDAVIT.

To: Arthur R. Seelig,
11 So. La Salle Street,
Chicago, Illinois,
Attorney for Appellants, "plaintiffs".

Please Take Notice that on the 12th day of January, A. D. 1940, we shall file in the office of the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, and ask that he present to the Court the motion of Milk Wagon Drivers Union, etc., et al, Appellees, asking the Court to stay the mandate of the Court in the aforesaid cause pending the disposition by the United States Supreme Court of a Petition to said Court for a Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit, and in support of said motion, we offer the Affidavit of Abraham W. Brussell.

At which time and place you may appear if you so see fit.

David A. Riskind,
Abraham W. Brussell,
Attorneys for Appellees (Defendants).

Received a copy of the foregoing Notice of Motion and Affidavit therein referred to this ..... day of January, 1940.

Arthur R. Seelig,
by G. P. Braun,
Secretary,
Attorney for Appellants (Plaintiffs).

State of Illinois, }
County of Cook. } ss.

AFFIDAVIT.

Abraham W. Brussell being first duly sworn makes his oath, deposes and says that he is one of the attorneys of record for the Milk Wagon Drivers Union of Chicago, Local 753, etc., et al, Appellees in this Court, defendants in the Court below; that he is entrusted with the duty of conducting the appeal proceedings in this cause on behalf of said Appellees; that after being informed of the order of this court dated January 9, 1940, denying the Appellees' Petition for re-hearing of the judgment and order of this Court of November 23, 1939, he communicated said fact to the Appellees; that said Appellees have requested and authorized your Affiant to proceed with the preparation and filing of a Petition in the United States Supreme Court for a Writ of Certiorari from said Court to this Honorable Court; that your Affiant is ready to proceed with the preparation of the record and the petition and is filing this Motion to stay mandate of this Court in accordance with the rule in such cases made and provided; that the order and judgment of this Court of November 23, 1939, reversed the findings of the Master and the findings and decree of the trial Court herein.

Your Affiant in his opinion believes that he will be able to complete the proceedings on Certiorari and cause the Petition therefor to be filed with the Clerk of the Supreme Court of the United States within, approximately, one month and that your Affiant will proceed with said proceedings with due diligence and without delay.

Wherefore, your Affiant respectfully prays that this Court grant motion of Appellees herein to stay mandate of this Court pending disposition by the United States Supreme Court of Petition to said Court for a Writ of Certiorari to this Honorable Court.

Furthermore, Affiant sayeth not.

Abraham W. Brussell.

Subscribed and sworn to before me this 12th day of January, A. D. 1940.

Louis H. Kohn, Jr.,
Notary Public.

(Seal)

State of Illinois, } ss.
County of Cook. }

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

Lake Valley Farm Products, Inc., *et al.*
vs.
Milk Wagon Drivers Union, etc., *et al.*
} Cause No. 6900.

MOTION.

Now come Milk Wagon Drivers Union of Chicago, Local 753, etc., et al, Appellees, (Defendants) by David A. Riskind and Abraham W. Brussell, their attorneys, and move the court to stay mandate in said cause pending the disposition by the United States Supreme Court of a Petition to said Court for a Writ of Certiorari from said Court to the United States Circuit Court of Appeals for the Seventh Circuit.

And in support thereof, Appellees offer the Affidavit of Abraham W. Brussell.

David A. Riskind,
Abraham W. Brussell,
Attorneys for Appellees (Def.).

Endorsed: Filed January 12, 1940. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the eighteenth day of January, 1940, the following further proceedings were had and entered of record, to-wit:

Tuesday, January 18, 1940.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

Lake Valley Farm Products, Inc., *et al.*, *Plaintiffs-Appellants*, vs. Milk Wagon Drivers' Union, Local 753, *et al.*, *Defendants-Appellants*. } Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

6900

On motion of counsel for appellants, It is ordered that the Mandate of this Court in this cause be, and it is hereby stayed pursuant to Rule 25 of the Rules of this Court.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 357 to 401, inclusive, contain a true copy of the proceedings had and papers filed, excepting briefs of counsel, stipulation as to printing record, stipulation and orders extending time for filing briefs, in the case of:

Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, etc., *et al.*, *Plaintiffs-Appellants,*

vs.

Milk Wagon Drivers' Union, Local 753, *et al.*, *Defendants-Appellees,*

No. 6900, October Term, 1939, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 26th day of January, A. D. 1940.

Frederick G. Campbell,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 1, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office - Supreme Court, U. S.
FILED
FEB 28 1940
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1939.

No. 770

MILK WAGON DRIVERS UNION, LOCAL 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, A VOLUNTARY ASSOCIATION; ROBERT G. FITCHIE, JAMES KENNEDY, STEVE SUMNER, FRED C. DAHMS, F. RAY BRYANT, ALVIN F. RICHARDS AND JOSEPH L. PATTERSON,

Petitioners,

VS.

LAKE VALLEY FARM PRODUCTS, INC., A CORPORATION; AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION NO. 819, A VOLUNTARY UNINCORPORATED ASSOCIATION; LAKE VIEW CO-OPERATIVE OF WATERTOWN, WISCONSIN, AN AGRICULTURAL COOPERATIVE CORPORATION OF THE STATE OF WISCONSIN,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

ABRAHAM W. BRUSSELL,
Attorney for Petitioners.

DAVID A. RISKIND,
ABRAHAM W. BRUSSELL,
Of Counsel.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1939

No. .....

MILK WAGON DRIVERS UNION, LOCAL 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, A VOLUNTARY ASSOCIATION; ROBERT G. FITCHIE, JAMES KENNEDY, STEVE SUMNER, FRED C. DAHMS, F. RAY BRYANT, ALVIN F. RICHARDS AND JOSEPH L. PATTERSON,

Petitioners,

VS.

LAKE VALLEY FARM PRODUCTS, INC., A CORPORATION; AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION NO. 819, A VOLUNTARY UNINCORPORATED ASSOCIATION; LAKE VIEW CO-OPERATIVE OF WATERTOWN, WISCONSIN, AN AGRICULTURAL COOPERATIVE CORPORATION OF THE STATE OF WISCONSIN,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Charles Evans Hughes, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The petition of Milk Wagon Drivers Union, Local 753, International Brotherhood of Teamsters, Chauffeurs,

Stablemen and Helpers of America, a voluntary association, Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson, and the petition of each of them respectively show unto this Honorable Court:

A. Summary Statement of Matter Involved.

1. *Economic theories of the dispute as shown by the evidence.*

This case arises out of an economic dispute in the milk industry in the City of Chicago, Illinois.

The disputants are: a Chicago local A. F. of L. craft union including its officers and members on the one hand (petitioners in this court and defendants below, hereinafter referred to as defendants), and on the other hand a "non-union" Chicago dairy, a Chicago local C. I. O. Industrial Union and a Wisconsin Agricultural Cooperative Corporation (respondents in this court and plaintiffs below, hereinafter referred to as plaintiffs).

The subject of the economic dispute is whether or not the plaintiff Lake Valley Farm Products, Inc., a corporation, should sign a union contract with the defendant A. F. of L. union. Under such union contract the plaintiff dairy would be required to pay its delivery men the union scale, maintain union hours and provide the proper working conditions specified by the standard Chicago union contract of defendant union (R. 147-154).

The plaintiff dairy refuses to sign such union contract and contends that signing such union contract would require the dairy to change its method of delivery of its dairy products to the public from that of a "vendor" system to that of the "employee' system. Under the vendor

system the plaintiff dairy sells its products to independent contractor drivers who are employers in their own right and having their own trucks, equipment and employees deliver the products of plaintiff dairy to retail milk stores and to housewives in the City of Chicago. The plaintiff dairy further contends that by means of this independent contractor system of delivery to retail milk stores in Chicago *its* "labor" costs of delivery are lower than under the "employee" system used by the unionized dairies in Chicago that operated under union contracts signed with defendant union; that because of such lower delivery costs it is enabled to sell milk to the public at "cut rate" prices that are lower prices than the prices of the milk sold by the union dairies that operate under the union contract with defendant union. The plaintiff "industrial" C. I. O. union has vendors as its members. The vendors of plaintiff dairy and their "helper" employees are members of this industrial union.

The defendant union contends that the vendor system is directly injurious to its members by virtue of the facts that the vendors and *their* employees work for lower "wage" return, longer hours, and under poorer working conditions than do the employees of union dairies which operate under a union contract; that the "vendor system" is a device whereby employers attempt to evade the requirements of a union contract; that the vendor system has caused loss of jobs to members of defendant union; that the spread of the vendor system to the present union dairies in Chicago would destroy the union and would destroy the benefits of the union contract for the union members. The defendant union is not desirous of changing the independent contractor system to an employee system but does desire to have the independent contractors and *their* employees work under conditions equal to those required by

the union contract. If the independent contractors and their helpers would operate under union conditions they would be taken into defendant union. The defendant union is not interested in the price of milk as such. It does not care what price is charged by the dairy for its products. If the dairy pays its men the union scale the union is satisfied regardless of the price of milk. If the dairy doesn't pay the union scale the union is *not* satisfied regardless of the price of milk to the public.

The union seeks to maintain and improve the benefits to its members. The price of the dairy's products is the concern of the dairy. The price of milk is determined by laws of economics.

The union is picketing by means of carrying banners or placards in front of the retail milk stores vending plaintiff dairy's products, to advertise to the public the existence of the dispute with the plaintiff dairy.

2. *Leading Facts Shown by Record.*

[We present the facts that we believe are proven by the record and material to the issues of *law* raised in our petition for certiorari. Where such facts are contrary to the opinion of the Circuit Court of Appeals or are not mentioned therein we refer to the record.]

The defendant union was organized in 1902. Its jurisdiction covers all drivers of milk wagons in the metropolitan area of the City of Chicago, Illinois. From 1902 the defendant union constantly engaged in activities to improve and did improve the working conditions of its members. In general the union attempted to secure for its members benefits resulting from trade unionism. Its membership reached its peak in 1931 when some 7,000 members were associated. The defendant union is a Chi-

cago local craft union affiliated with the American Federation of Labor through its relationship with the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers.

The defendant union has union contracts with approximately 120 out of 150 dairies selling milk products. The standard agreement is Defendant's Exhibit 3 (R. 147-154). This provides for hours of labor, details of work, wages, commissions and various other benefits and privileges pertaining to terms and conditions of employment. This agreement shows the benefits obtained by defendant union for its members.

In 1931 with the onset of the depression certain dairies began to discharge members of the defendant union as drivers of the milk trucks, and to put in their place individuals who owned their own trucks and operated as "independent contractors" in the sense that they purchased milk from the dairies and they sold it to the various retail store keepers and housewives. These vendors gradually developed long routes and engaged "helpers", *i. e.*, their own employees. The vendors and helpers' hours of labor were much longer than the hours of labor under the union agreement. The financial return, *i. e.*, "wages" were much lower than the union scale (R. 220). See also R. 68, 73, 77, 82, 87, 290, 300.

This system of competition persisted and flourished in the City of Chicago from 1931 onward to the present time. Membership in defendant union has constantly decreased since 1931. Part of this decrease is due to the competition with the vendor system (R. 97).

The Wagner Dairy had some vendors, but also had some individuals who were technical employees in the sense that they operated Wagner Dairy trucks and were put on a

straight salary therefor of $18 per week. Their salary was much lower than the union scale which was in 1938 a minimum of $48 per week and commissions.

Similarly individuals who had been vendors for the plaintiff dairy earned as low as $15 per week after paying all their expenses notwithstanding their longer hours and unregulated working conditions (R. 87, 89, 90).

The plaintiff, Lake Valley Farm Products, Incorporated, substantially distributed its milk products to grocery stores and to housewives by means of the so-called vendors.

The defendant union found that owners of some dairies continued to pay low financial returns to the drivers of their trucks and obtain long hours of labor from the drivers and their helpers by means of this vendor system. This system tended to displace union members from their jobs; it tended to injure and threaten the existence of the higher union scale and the better working conditions. The defendant union in attempting to avoid these injurious consequences to its members sought to unionize both the Wagner Dairy and the plaintiff, Lake Valley Farm Products, Incorporated. These attempts were unsuccessful (R. 220). See also R. 89, 90.

Defendant union in order to achieve the unionism of the plaintiff dairy sought to publicize plaintiff's non-unionism by means of banners, or placards carried in front of the stores vending the products of plaintiff dairy to the public. As soon as the store handled products of a union dairy the pickets were withdrawn.

In February 1938, the plaintiff C. I. O. union was organized to "represent" vendors and their helpers who were not members of defendant union.

Plaintiff union competed with defendant union and began to publicize on its own behalf by having the drivers dis-

tributing the products of plaintiff dairy give to the various store keepers the sign or card bearing on it the legend of the plaintiff union. See Plaintiff's Exhibit 1 (R. 121). The plaintiff union sought to destroy defendant union (R. 287-288, 328-329).

119 out of 120 union dairies in the City of Chicago sell cut-rate milk (R. 344).

The defendant union is not concerned with the price of milk but simply in the "hours and wages evils" of the vendor system (R. 328-345).

The price of milk was not solely dependent upon the wages paid to union men because in two instances the union scale has been increased while the price of milk to the public was decreased (R. 343).

The evidence discloses as found by the master that the plaintiff made no true attempt to obtain the assistance of the public authorities in an attempt to stop violence (R. 319).

The evidence discloses that the plaintiff at no time made any attempt to negotiate or arbitrate by any arbitration machinery its defense with the defendant union.

With regard to the acts of violence, the master's finding was against the plaintiff insofar as commission of acts of violence by the defendant was concerned with the exception of several instances.

There is proof that violence was committed by dairies that competed with each other for business (R. 330).

There is proof that other individuals having no relationship with the milk industry were guilty of acts of violence (R. 328).

Pleadings.

On May 21st, 1938, respondents, Lake Valley Farm Products, Inc., a corporation; Amalgamated Dairy Workers, Local Industrial Union No. 819, a voluntary unincorporated association; Lake View Co-Operative of Watertown, Wisconsin, an agricultural cooperative corporation of the State of Wisconsin, and one Joseph Wagner, doing business as Wagner Dairy Products filed their complaint in equity in the United States District Court for the Northern District of Illinois, Eastern Division, asking injunctive relief against the petitioners, Milk Wagon Drivers Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson. The individual petitioners were named both individually and in their official capacity as officials of the said Milk Wagon Drivers Union (Rec. 2-3). In substance the main theories of the complaint were that the defendants were guilty of conspiracy and combination in restraint of trade and to foster a monopoly under the Sherman Act and Clayton Acts (Rec. 4-5, 15); that the defendants sought to maintain an artificial price of milk in the City of Chicago; that the defendants were guilty of physical violence against the plaintiffs; that as a means of carrying out the conspiracy the defendants caused its members to patrol in front of the retail stores selling plaintiffs' products to the public carrying a banner or placard, having the words inscribed thereon, "This milk store is unfair to Milk Wagon Drivers' Union, Local 753, I. B. T., affiliated with the A. F. L." The complaint charged that such picketing constituted secondary boycott. The complaint asked for relief by injunction restraining the defendants from various acts, including the patrolling

of the stores vending plaintiff dairy products to the public (Rec. 34).

On May 23rd, 1938, the cause was referred to the Master on plaintiffs' motion for preliminary injunction (Rec. 43). On May 27th, 1938, the defendants filed their answer. The theories of the answer in substance were, first, a denial of the facts alleged in the complaint; second, affirmative statement of the facts of the economic controversy between the defendants and the plaintiffs out of which the injunction suit arose. The answer sets out these facts so concisely that for purpose of brevity we respectfully refer the court to the following portions of our answer: R. 47-58

Considerable evidence was taken. The Master's Report was filed on August 8th, 1938 (Rec. 203-223). The Master made numerous findings of fact, and recommended that the relief prayed should be denied and that the bill of complaint should be dismissed for lack of jurisdiction (Rec. 223).

The Master's findings of fact and of law in substance are in favor of the issues of fact and law raised by the defendants' answer.

The plaintiffs filed exceptions to the Master's Report (Rec. 239). After argument the trial court overruled plaintiffs' exceptions.

Joseph Wagner, doing business as Wagner Dairy Products, was given leave to withdraw as party plaintiff (Rec. 246).

On December 15th, 1938, District Court made certain findings of fact and conclusions of law (R. 247-251). These findings of fact and conclusions of law are also in substance in favor of the issues of fact and law raised by defendants' answer.

On December 15th, 1938, the District Court entered a decree dismissing the said Joseph Wagner, doing business as Wagner Dairy Products with prejudice against any further proceedings on the matters alleged in the complaint, overruled the other plaintiffs' exceptions to the Master's Report, dismissed the complaint of the remaining plaintiffs, (*i. e.*, the present respondents) *both* for want of equity and for want of jurisdiction (Rec. 252).

Plaintiffs appealed from the decree to the United States Circuit Court of Appeals for the Seventh Circuit.

Judgment and Opinion of the United States Circuit Court of Appeals for the Seventh Circuit.

On October 12th, 1939, the cause was submitted to the Circuit Court of Appeals for the Seventh Circuit on the original supplemental transcripts of records, briefs and oral arguments.

On November 29th, 1939, the Circuit Court of Appeals for the Seventh Circuit by a divided court reversed the decree of the trial court and remanded the cause for further proceedings not inconsistent with the opinion of the majority of the court (Rec. 370). The majority opinion was rendered by Justice Sparks, with Justice Evans concurring, and Justice Treanor filed a dissenting opinion (Rec. 370-378).

On December 14th, 1939, the petitioners filed a petition for rehearing (Rec. 381). On December 22nd, 1939, respondents filed an answer to the petition for re-hearing (Rec. 391). On January 9th, 1940, the petition for rehearing was denied.

The *law* as formulated and applied by the majority opinion of the court may be analyzed and outlined as follows:

1. The majority of the court ruled that the picketing by the defendant union of retail bottled milk stores in Chicago, Illinois, selling to the public milk originally produced on Wisconsin farms constituted a restraint of interstate commerce or trade within the meaning of the Sherman Act and Clayton Act.

2. The majority of the court ruled that the picketing by the defendant union of retail milk stores in Chicago, Illinois, constituted an activity or an unlawful conspiracy within the meaning of the Sherman Act and the Clayton Act.

3. The majority of the court ruled that the attempted unionization of the milk wagon drivers in the entire milk delivery industry in Chicago, Illinois, constituted an attempt to monopolize interstate commerce within the meaning of the Sherman Act and Clayton Act.

4. The majority of the court ruled that the attempts by the defendant union to unionize the Lake Valley Farm Products, Inc., and that the dispute between the plaintiff, Amalgamated Dairy Workers, Local Industrial Union No. 819, and the defendant, Milk Wagon Drivers Union, Local 753, did not constitute a labor dispute within the meaning of the Norris-LaGuardia Act.

5. The majority of the Court ruled that the picketing by the defendant union of the retail milk stores in Chicago, Illinois, constituted a secondary boycott and that such secondary boycott deprived the defendant union of the protection of the Norris-LaGuardia Act and prevented the application of the Norris-LaGuardia Act to the case at bar.

6. The majority of the court ruled that the defendants' constitutional right to free speech under the due process clause of the 14th Amendment to the Federal Constitution did not permit them to conduct peaceful picketing of retail stores in the City of Chicago.

The minority, as shown by the dissenting opinion of Justice Treanor in substance adopted the exact antithesis of the rules or conclusions found by the majority of the court as outlined above.

Reasons Relied on for the Allowance of the Writ.

1. The decision of the Circuit Court of Appeals to the effect that the economic dispute between the defendant union on the one hand and the plaintiff dairy and the plaintiff union on the other hand is not a labor dispute within the meaning of Section 13 of the Norris-LaGuardia Act is squarely in conflict with and contrary to the decisions of this Court in:

Lauf v. *Shinner & Co.*, 303 U. S. 323 at 329, 330 (1938);

New Negro Alliance v. *Sanitary Grocery*, 303 U. S. 552 at 559, 562 (1938);

Fur Workers Union v. *Fur Workers Union*, 84 Law Ed. 247 (December 11th, 1939).

In addition, this decision of the Circuit Court of Appeals on this question of "labor dispute," is in conflict with the decisions in other circuits:

Levering & Co. v. *Morrin*, 71 Fed. 2nd 284, 286, 287 (C. C. A., 2, 1934);

Grace Company v. *Williams*, 96 Fed. 2nd 478, 481 (C. C. A., 8, 1938);

Donnelly Company v. *International Ladies Workers' Union*, 99 Fed. 2nd 309 (C. C. A. 8, 1938).

This decision of the Circuit Court of Appeals is also squarely contrary to an earlier case in the same circuit:

Blankenship v. *Kurfman*, 96 Fed. 2nd 450, 455, 456 (C. C. A. 7, 1938).

2. The decision of the Circuit Court of Appeals that the picketing by defendant Chicago local union of retail bottled milk stores in Chicago, Illinois, constituted such a burden on interstate commerce in milk originally produced on Wisconsin farms that amounted to a restraint of interstate commerce within the prohibitions of the Sherman and Clayton Acts was squarely in conflict with and is contrary to the decisions of this Court in:

Levering & Co. v. *Morrin,* 289 U. S. 103 (1933);
United Leather Workers v. *Herkert Co.,* 265 U. S. 457 at 469, 471 (1924);
United Mine Workers v. *Coronado Coal Co.,* 259 U. S. 344 at 403, 407, at 408, 410-411 (1922);
Industrial Association v. *United States,* 268 U. S. 64, at 77-78, 80-82, 84 (1925).

3. The decision of the Circuit Court of Appeals in holding that the unionization of all the milk wagon drivers for dairies in the City of Chicago, Illinois, would constitute a monopoly of interstate trade or commerce in violation of the provisions of the Sherman and Clayton Acts is squarely in conflict with and is contrary to the decision of this court in:

Appalachian Coals, Inc. v. *United States,* 288 U. S. 344, at 359, 360 (1933);
Standard Oil Co. v. *United States,* 221 U. S. 1 at 56-58, 66 (1911);
United States v. *American Tobacco,* 221 U. S. 106 at 178, 180 (1911);
National Association of Window Glass Manufacturers v. *United States,* 263 U. S. 403 (1923).

4. The decision of the Circuit Court of Appeals for the Seventh Circuit that the picketing of retail bottled milk

stores in Chicago constituted such a burden on interstate commerce in milk that amounted to a restraint of interstate commerce within the prohibitions of the Sherman and Clayton Acts was squarely in conflict with and is contrary to the decision of another Circuit Court of Appeals, namely, *Leader* v. *Apex Hosiery Co.*, 108 Fed. 2nd 71, decided by the United States Circuit Court of Appeals for the Third Circuit (rehearing denied, December 27th, 1939) now pending on the docket of this Court as No. 638, October term, 1939, upon petition for certiorari.

5. The decision of the Circuit Court of Appeals for the Seventh Circuit that a Federal Court is not deprived of jurisdiction by the Norris-LaGuardia Act to enter an injunction restraining peaceful picketing if such peaceful picketing amounts to a so-called "secondary boycott" is squarely in conflict with and is contrary to the decision of the United States Circuit Court of Appeals for the Third Circuit in the case of *Wilson & Company* v. *Birl*, 105 Fed. 2nd 948 (1939).

6. The decision of the Circuit Court of Appeals that if a defendant labor union involved in a labor dispute within the meaning of Section 13 of the Norris-LaGuardia Act is guilty of a conspiracy to restrain interstate commerce within meaning of Sherman Act it may even be enjoined from the peaceful picketing specifically protected by Section 4 of the Norris-LaGuardia Act is contrary to the express provisions of Section 5 of the Norris-LaGuardia Act. Section 5 in substance deprives every United States court of jurisdiction to issue an injunction on the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an "unlawful combination" because of the doings in concert of the acts enumerated in Section 4 of the Norris-LaGuardia Act.

There is no precise or even substantially analogous decision by this Court upon this question in so far as we are aware.

The decisions of the lower Federal courts are apparently in conflict upon this problem.

For *decisions* that in substance *hold* that Section 5 of the Norris-LaGuardia Act precludes the issuance of an injunction to restrain peaceful picketing even though the *facts* show that the activities of the labor union of which peaceful picketing is only a part do restrain and burden interstate commerce, see:

International Brotherhood of Teamsters v. *International Brotherhood of United Brewery Workers,* 106 Fed. 2d 871, at 876 (C. C. A., 9th, reh. denied Nov. 8, 1939, rev'g 25 Fed. Supp. 870).

Wilson and Company v. *Birl,* 105 Fed. 2nd, 948, (C. C. A. 3rd, July 10th, 1939).

Grace Company v. *Williams,* 96 Fed. 2nd, 478 (C. C. A. 8th, 1939).

Terrio v. *S. N. Nielsen Co.,* 30 Fed. Supp. 77, at 81 (D. C. La., Nov. 2, 1939).

Pauly Jail Bldg. Co. v. *International Ass'n. of Bridge Workers,* 29 Fed. Supp. 15, (D. C. Mo., Aug. 3, 1939).

Houston Lines Co. v. *Local Union,* 24 Fed. Supp. 619, (D. C. Okla., 1938).

Diamond Hosiery v. *Leader,* 20 Fed. Supp. 467, at 469-470, (D. C. Pa., 1937).

For decisions *contra,* that apparently hold that interference by a labor union with interstate commerce warrants the entry of an injunction even against peaceful picketing, see

Mayo v. *Dean,* 82 Fed. 2d, 554, (C. C. A. 5th, 1936).

Fehr v. *Baking Co.,* 20 Fed. Supp. 691 (D. C. La., 1937).

This important problem of "conflict" between the Sherman Act and the Norris-LaGuardia Act should be resolved and determined by this court. The recency of many of the foregoing decisions indicates the increasing importance of an early and conclusive determination of this vital Federal problem.

7. The decision of the Circuit Court of Appeals to the effect that the defendant union activities in peacefully picketing retail stores were illegal activities, should be overruled by this court and this court should adopt the meaning of Section 20 of the Clayton Act advanced by Mr. Justice Brandeis in his dissenting opinion in *Duplex Press Co.* v. *Deering,* 254 U. S. 443.

The reasons justifying change by this court in its interpretation of Section 20 of the Clayton Act are found in the enactment of the Norris-LaGuardia Act in 1932 and other Federal legislation either expressly or impliedly recognizing and approving unionization, and the broadening of the scope of permissible labor union activity.

8. The decision of the Circuit Court of Appeals to the effect that a Federal equity court may by injunction restrain individual members of a labor union from carrying a banner or placard on a public highway in front of a store selling the non-union product for the purpose of advertising or communicating to the public the information that the store is selling such non-union product is not in accord with the principles and the extent of the guaranteed rights of free speech within the meaning of the due process clause of the 14th Amendment to the Federal Constitution as formulated and expressed by this court in the cases of: *Schneider* v. *Town of Irvington,* 60 Sup. Ct. Rep. 146, 150 (Nov. 22, 1939); *Senn* v. *Tile Layers Union,* 301 U. S. 468 at 478 (1937); *Hague* v. *C. I. O.,* 307 U. S. 496 (1939); *Lovell* v. *City of Griffin,* 303 U. S. 444 at 450-452 (1938).

9. The decision of the Circuit Court of Appeals to the effect that the Federal Anti-Trust Laws apply to labor unions should be overruled by this court.

Logically, this reason should be the first reason advanced to this court in this petition. But in conformity with the general precept that a broad problem of this kind wherein counsel ask this court to overrule numerous prior decisions should not be determined if the cause may be disposed of on an issue less broad, we have left it for the last reason.

This contention has been argued before this court in *United States* v. *Borden,* 84 Law Ed. 143, at 154 (1939), where this court held that the problem was not open on the appeal. In short, it is respectfully suggested that the "Legislative History" of both the Sherman Act and Section 6 of the Clayton Act of 1914 conclusively demonstrates that the Federal Anti-Trust Laws are not applicable to labor unions and their activities. In our brief we shall not "argue" at length this question but we do rely upon this question as *one* of the reasons for the granting of certiorari herein.

National Importance of Federal Questions Presented Herein.

The decision by the Circuit Court of Appeals concerns several Federal problems of vital national concern: First, the construction and application of the Federal Anti-Trust Laws to the operation, the goals or purposes and the activities of labor unions; second, the construction and application of the Norris-LaGuardia Act to the operation, the goal and the activity of labor unions.

It is respectfully suggested that the decision of the majority of a sharply divided court upon problems whose

determination is not only vital to the continued growth of labor unions but is important even to the existence thereof—is a problem of such *national* importance as merits full consideration and determination by this court.

To hold that a local labor union by picketing a store in the metropolitan City of Chicago is guilty of a restraint of interstate trade within the meaning of the Federal Anti-Trust laws—which may even subject the picketers to *criminal* prosecution—is a departure from the purposes of the Anti-Trust laws. It is an unwarranted application of the Anti-Trust laws that may result in the strangling of not only this labor union but of many other labor unions similarly situated. This construction would make almost *every* strike in most businesses a violation of the Federal Anti-Trust Laws.

In addition, to permit this narrow construction of the labor dispute provisions of the Norris-LaGuardia Act to stand is to return the Federal Courts into the business of Government by injunction in disregard of the economic and social history leading up to the enactment of the Norris-LaGuardia Act. The same Circuit had previously committed a similar error which this court corrected in its decision in *Lauf* v. *Schinner & Co.*, 303 U. S. 552. It is respectfully urged that *repetition* of this latter error again calls for exercise of this court of its supervisory power.

PRAYER.

Wherefore, your petitioners and each of them respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Seventh Circuit demanding that court to certify and to send to this court for review and determination on a day certain to

be therein named a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 6900, *Lake Valley Farm Products, Inc., a corporation, et al.* v. *Milk Wagon Drivers' Union, Local 753, et al.*, and that such judgment of the Circuit Court of Appeals for the Seventh Circuit may be reversed by this Honorable Court and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

MILK WAGON DRIVERS UNION, LOCAL 753,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, A VOLUNTARY ASSOCIATION,
ROBERT G. FITCHIE,
JAMES KENNEDY,
STEVE SUMNER,
FRED C. DAHMS,
F. RAY BRYANT,
ALVIN F. RICHARDS AND
JOSEPH L. PATTERSON,
Petitioners,

By ABRAHAM W. BRUSSELL,
Attorney for Petitioners.

DAVID A. RISKIND,
ABRAHAM W. BRUSSELL,
Of Counsel.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

Opinion of Court Below.

The United States District Court for the Northern District of Illinois, Eastern Division, wrote no opinion but it made findings of fact and conclusions of law (R. 247-251). Included therein by reference (R. 250) were the various findings of fact made in the Master's Report (R. 203-223).

The opinion of the United States Circuit Court of Appeals for the 7th Circuit (R. 359-378) is reported in 108 Fed. 2nd. 436-448, Advance Sheets for February 5, 1940.

II.

Jurisdiction.

1. The statutory provision believed to sustain the jurisdiction of this Court to review the judgment of the Circuit Court of Appeals is Section 240 (a) of the Judicial Code as amended by the Act of February 13th, 1925, Chap. 229, Section 1; 43 Stat. 938 [Title 28 U. S. C. A. Sec. 347 (a)].

Dates of Judgment and Denial of Petition for Rehearing.

The decree of the Circuit Court of Appeals for the Seventh Circuit was entered on November 29th, 1939 (R. 360). The petitioners' petition for rehearing was filed on December 14th, 1939 (R. 380) and denied on January 9th, 1940 (R. 397).

This petition for writ of certiorari is timely within the requirements of the Act of February 13th, 1925, Chap. 229, Sec. 8; 43 Stat. 940 as found in Title 28 U. S. C. A. Sec. 350. In addition, since the petitioners filed a petition for rehearing, the statutory period of time within which the application to this Court for a Writ of Certiorari may be made, begins to run from the date on which the petition for rehearing was denied, namely, January 9th, 1940. (*Citizens Bank of Michigan City* v. *Opperman,* 249 U. S. 448; *Gypsy Oil Company* v. *Escoe,* 275 U. S. 498; *Morse* v. *United States,* 270 U. S. 151; *Aspen Mining Co.* v. *Billings,* 150 U. S. 31; Title 28, U. S. C. A. Sec. 350.)

III.

Statement of Case.

A summary statement of the facts has already been made in the preceding petition for certiorari under pages 2-7, which in the interest of brevity is hereby adopted and made a part of this brief.

IV.

Specification of Errors To Be Urged.

Petitioners urge as errors all of the contentions advanced by them and sustained in the District Court of the United States for the Northern District of Illinois, Eastern Division, and urged by them, and rejected by the majority of the Circuit Court of Appeals for the Seventh Circuit. The dissenting minority of the Circuit Court of Appeals sustained all of the contentions advanced by petitioners with the sole exception of the contention that the Anti-Trust laws are not applicable to labor unions and their activities.

The Circuit Court of Appeals erred in:

1. Holding and ruling that the Norris-LaGuardia Act did *not* prohibit the issuance of an injunction to restrain peaceful picketing by a craft union of retail milk stores selling to the public the bottled milk products of a dairy which refused to sign a union contract with the craft union and which dairy caused the milk to be delivered to the retail stores by members of a competing industrial union.

2. Holding and ruling that the peaceful picketing by a Chicago local union of retail milk stores in Chicago, Illinois, selling bottled milk to the public constituted a restraint of interstate commerce in milk within the prohibitions of the Sherman Act because the milk was originally produced on Wisconsin farms.

3. Holding and ruling that attempts by a Chicago local craft union to unionize all Chicago non-union dairy drivers of milk wagons constituted a monopoly or attempt to monopolize interstate trade or commerce within the prohibitions of Section 2 of the Sherman Act.

4. Holding and ruling that the Federal Anti-Trust laws were applicable to labor unions and their activities.

5. Holding and ruling that the petitioners' rights to free speech under the due process clause of the 14th Amendment to the Federal Constitution did not prevent a Federal Equity Court from issuing an injunction to restrain petitioners from carrying a banner or placard on the public highway.

V.

SUMMARY OF ARGUMENT.

A.

By virtue of the provisions of the Norris-LaGuardia Act a Federal District Court has no jurisdiction to issue an injunction restraining peaceful picketing of retail milk stores by an A. F. of L. craft union where the object of the peaceful picketing is to enlist public support for the craft union in its attempt to unionize the dairy whose products are delivered to the store by the members of a C. I. O. industrial union which is competing with the craft union.

B.

Peaceful picketing of Chicago retail milk stores by a Chicago local craft union for the purpose of unionizing a Chicago dairy is not a restraint of interstate trade or commerce within the prohibitions of Section 1 of the Sherman Act even though there is a decrease in the sales of the bottled milk which was originally produced on Wisconsin farms.

C.

Attempts by a Chicago Milk Wagon Drivers' Union to unionize all Chicago non-union dairy drivers of milk wagons did not constitute a monopoly or an attempt to monopolize within the prohibitions of Section 2 of the Sherman Act.

D.

Section 20 of the Clayton Act of 1914 legalizes the activities of a craft labor union that seeks to enlist public support in an economic dispute over the signing of a union contract with a non-union dairy by means of placards or banners carried by union members on the public highway in front of retail milk stores selling to the public the products of such non-union dairy which are delivered to the store by members of a competing industrial union.

E.

The due process clause of the 14th Amendment to the Federal Constitution prevents a Federal equity court from restraining and enjoining union members and working men from carrying a banner or placard on the public highways as a means of communicating information to the public in an attempt by the union to have the public assist the union in its economic controversy with a non-union dairy and with a competing union.

VI.

ARGUMENT.

A.

By virtue of the provisions of the Norris-LaGuardia Act a Federal District Court has no jurisdiction to issue an injunction restraining peaceful picketing of retail milk stores by an A. F. of L. craft union where the object of the peaceful picketing is to enlist public support for the craft union in its attempt to unionize the dairy whose products are delivered to the store by the members of a C. I. O. industrial union which is competing with the craft union.

Section 13 of the Norris-LaGuardia Act defines "labor dispute." See Appendix, pp. 5-6.

The majority and minority of the Circuit Court of Appeals sharply divided on the problem whether the controversy in the case at bar constituted a "labor dispute" within the meaning of Section 13 of the Norris-LaGuardia Act.

We urge that the *minority* correctly found this was a "labor dispute" within the meaning of Section 13.

Sub-sections (a), (b) and (c) of Section 13 must all be considered in determining the existence of a "labor dispute."

First, consider sub-section (a). That refers to the *case* growing out of a labor dispute. What persons may the *case* involve? The case at bar involves persons who are engaged in the same industry. All these three plaintiffs and all of the defendants, have direct interests in the milk industry. At the very least, all of them have indirect

interests. And all of them have direct or indirect interests in the *dispute* concerning the unionization of the plaintiff dairy, *i. e.* the unionization of the vendors of the plaintiff dairy and the vendors' employees.

Also the *dispute* (not the case) is between one employer, *i. e.*, the Lake Valley Dairy, and an association of employees in the same industry. Under the provisions of this sub-section (a), if there were a dispute between plaintiff Lake Valley Dairy or the association to which it belonged and the union dairies in the City of Chicago, even that would be sufficient to constitute a labor dispute within the meaning of this sub-section. Also, the dispute between the plaintiff C. I. O. Union and the defendant A. F. of L. Union, is a dispute between two associations of employees.

Next, taking up the last clause in sub-section (a). We have the broad definition that a case shall be held to involve or grow out of a labor dispute when the case involves "any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined)." Accordingly, we must next look to sub-sections b and c in order to determine the extent of these two classes.

Under sub-section b, a person is considered as one participating in, or interested in a "labor dispute" if relief is sought against him and if he is engaged in the same industry in which the dispute occurs, or if he has a direct or indirect interest therein, *i. e.*, the dispute, or if he is a member of any association composed in whole or in part of employers or employees engaged in such industry. Let us apply this to the facts in the case at bar.

Plaintiff, Lake Valley Dairy, was the object of certain relief sought by the defendant union in an attempt to organize such dairy. The dispute centers around the ques-

tion of unionization of plaintiff dairy. The plaintiff dairy was a member of a milk dealers association. The defendant union is also engaged in the milk industry. The defendants personally, were officers and members of an employees' association engaged in such milk industry. Accordingly, the case at bar falls within Sub-section (b) too.

Next let us consider the broad definition of "labor dispute" as given by sub-section c. By sub-section c, the term "labor dispute" includes *any controversy* concerning the following:

(1) Terms or conditions of employment;

(2) Concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment.

And the statute emphasizes that the relationship of employer and employee between the disputants is not necessary in order to make the controversy a labor dispute.

Reference to "any controversy" is made regardless of whether or not the disputing parties stand in the proximate relation of employer and employee—the controversy need concern ONLY the specified subject matter.

Apply this broad standard to the case at bar. Certainly the defendant union sought to change the terms and conditions of the plaintiff Lake Valley Dairy's arrangement with its vendors and their helpers. It sought to have such vendors and helpers limit their work to the regular union hours and to receive as return therefor the regular union scale. The same is also true of the dispute between the defendant union and the Wagner Dairy.

Next, can it be disputed that the defendant union was involved in a controversy concerning the *representation* of the vendors and their helpers in negotiating terms and conditions of employment? Similarly with changing terms and conditions of employment?

Hence as an original problem the facts in the case at bar clearly fall within the express standards formulated by the Federal Congress. Both the Master and Chancellor found on the facts and the law that the controversies in the case at bar between the plaintiffs and defendants constituted a "labor dispute" within the meaning of Section 13.

In considering the Norris-LaGuardia Act, attention must also be given to the "public policy" of the act.

Section 1 commands that no restraining order or injunction be issued contrary to the public policy declared in the Act. Section 2 states the public policy of such legislation.

Our facts show that the members of the defendant union, for their mutual aid and mutual self protection, are seeking to unionize the Lake Valley Dairy, as they sought to unionize the Wagner Dairy. Such organization activities were for the ultimate purpose of improving the working conditions of the members of the defendant union. But in addition defendants seek to protect the members of the defendant union in their present achievements. Let us assume that various dairy employers in the City of Chicago find that they can make more profit for themselves by paying less money for delivery costs as a result of adopting a vendor system whereby such vendors and their helpers receive "wages" considerably lower than that received by the members of the defendant union. Does it require much argument to demonstrate that the members of the defendant union will not be able to maintain their

higher wage scale and less hours and their better working conditions? It is not a question of whether any particular individual believes the members of the defendant union are or are not justified in attempting to maintain a high wage scale for themselves. No individual may dogmatically say that the members of the defendant union are unjustified in competing for higher wages or better working conditions. Defendants have the undisputed right in a competing market to attempt to obtain wages and hours that are most appealing to them. Employers of labor in their dairies also have the legal right to attempt to compete in the sense of trying to pay as low wages and work their men as long hours as they find they are able to do in such competing market. But this is economic competition. The desirable social goal is to permit competition on an equal competitive basis. Organization on the part of workers tends to put them on equal footing with those who "employ" them.

The Norris-LaGuardia Act was intended to limit the Federal District Courts in the issuing of injunctions in matters arising out of these economic disputes between working men and employers. Too often the Federal Courts had interfered by injunction and by so doing deciding the issue in favor of the employer.

With respect to the purpose of the act, Mr. Justice Roberts of this court in *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552, stated:

> "The legislative history of the Act demonstrates that it was the purpose of Congress further to extend the prohibitions of the Clayton Act respecting the exercise of jurisdiction by Federal Courts and *to obviate the results of the judicial construction of that Act.*" 303 U. S. at p. 562. (Italics ours.)

The committee reports leading to the enactment of the Norris-LaGuardia Act indicate the clear legislative intent to change the law as it was evidenced by the Supreme Court decisions rendered prior to *1932.* Accordingly, the decisions of the Supreme Court of the United States with regard to labor disputes, rendered prior to 1932, do not have any bearing in the determination of the issues in the case at bar.

See H. R. Rep. No. 669, 72nd Congress 1st Session (1932).

In *New Negro Alliance* v. *Sanitary Grocery Co.,* 303 U. S. 552 (1938) the defendant operated grocery stores employing both white and negro employees. The plaintiff corporation was composed of colored persons organized for the mutual improvement of its members and for the promotion of civic and educational enterprises for its members. None of the plaintiff's members were engaged in a business competing with the defendant. The plaintiffs, officers of the corporation, requested the defendant to adopt a policy of employing negro clerks in certain of its stores in the course of personnel changes. The defendant ignored the request. The plaintiffs caused a person to patrol in front of one of defendant's stores carrying a placard reading "Do your part! Buy where you can work! No negroes employed here!" It caused a similar patrol of two other stores. There was no violence or intimidation. The Trial Court and the Court of Appeals of the District of Columbia, found there was no labor dispute and therefore entered an injunction restraining the plaintiffs, among other things, from picketing the stores. The Court of Appeals found that there was no labor dispute within the meaning of the Norris-LaGuardia Act because it did not involve terms and conditions of employment, wages, hours, unionization or betterment of

working conditions. Mr. Justice Roberts holds that there was a labor dispute within the meaning of the provisions of Section 13, and therefore finds that the District Court erred in not complying with the "conditions precedent" of Section 7 of the Norris-LaGuardia Act before granting *any* injunction.

In answer to the stores' argument that this was simply a racial dispute, the Court held that the Norris-LaGuardia Act does not concern itself with the background or the motives of the disputes. The Court said:

> "There is no justification in the apparent purposes or express terms of the Act for limiting its definition of labor disputes and the cases arising therefrom by excluding those which arise with respect to discrimination in terms and conditions of employment based upon differences of race or color." 303 U. S. at p. 561.

Certainly in the case at bar, the desire by the defendant union and the members thereof, for fair and equitable conditions of employment of *themselves,* is more closely related to the Lake Valley's dairy business than was the situation in this *New Negro Alliance* case. In that case the Court held that a desire on the part of the plaintiffs to have the defendant employ members of the Negro race "generally," involved such clash of economic interests as fell within "any controversy concerning terms and conditions of employment, etc.," provision of the Norris-LaGuardia Act. If the object of the New Negro Alliance in seeking to have members of the Negro race employed was a labor dispute involving "terms and conditions of employment" within the meaning of Section 13, then a *a fortiori* the desire of the members of the defendant union to either provide work for such of its members

who were unemployed, or the desire to increase the influence of the union by taking in new members from the vendors and their helpers, and the desire to protect their hard-earned high wage scale and standard of living, was sufficient controversy concerning the clash of economic interests between the plaintiff non-union dairy and the defendant union.

In *Lauf* v. *Schinner & Company*, 303 U. S. 323, Mr. Justice Roberts defined "labor dispute." Defendant corporation maintained five meat markets in Milwaukee, Wisconsin. Plaintiffs were an unincorporated labor union and its business manager. None of the defendant's employees were members of the plaintiff union. The plaintiff demanded that the defendant require its employees to become members of the plaintiff union, as a condition of their continued employment by the defendant. Plaintiff union had not been chosen by defendant's employees to represent them in any matter connected with the defendant; defendant's employees refused to join the plaintiff union. The plaintiff sought to coerce the defendant to require its employees to join the plaintiff union and to accept it as their exclusive bargaining agent and as a condition of their continued employment. In order to attain such result, the plaintiff caused false and misleading signs to be placed in front of the defendant's stores, caused persons who were not defendant's employees to picket these stores, falsely accused the defendant of being unfair to organized labor and exercised threats and intimidation to prevent defendant's customers and patrons from purchasing at defendant's markets. Suit was brought in the Federal District Court on the ground of diversity of citizenship. The District Court held that no labor dispute existed between the plaintiffs and the defendant as defined both by the Wisconsin Anti-Injunction Act and

the Federal Norris-LaGuardia Act, and restrained the acts of the plaintiffs previously stated. The Circuit Court of Appeals affirmed this decree (90 Fed. (2d) 250) in following the law of the case adopted on an earlier appeal taken from the issuance of an interlocutory injunction (as reported in 82 Fed. (2d) 68). The Supreme Court reversed. It held first a labor dispute existed within the meaning of the Wisconsin Anti-Injunction Act (303 U. S. at pages 327-328); second, the District Court erred in granting an injunction in the absence of findings which the Norris-LaGuardia Act makes pre-requisite to the exercise of jurisdiction (303 U. S. pages 329-330); third, that the Circuit Court of Appeals erred in holding that the declaration of policy under the Norris-LaGuardia Act narrowed the definition of a labor dispute found in Section 13 of the Norris-LaGuardia Act. Accordingly, the judgment was reversed and the cause remanded for further proceedings in conformity with the opinion of the Court.

Apply the principles to the case at bar. Even though a labor association has none of its members as employees of the individual employer, and even though the employees of such employer are opposed to having the labor association act as their representative, there nevertheless is a labor dispute within the meaning of the Act. It does not matter that the labor union asks the employer to coerce his employees to join it and accept it as its exclusive bargaining agent, contrary to their will. There is a labor dispute even though the labor union seeks to compel the employer to require his employees to accept a closed shop contract. Is not the economic position of the defendant labor union and its members more closely imperiled by the business carried on by the plaintiff dairy than was the fact in the case of *Lauf* v. *Schinner Company?* The economic bases of the dispute are much clearer and stronger in the case at bar than they were in *Lauf* v. *Schinner.*

In the case at bar, the defendant union was directly interested in the hours and wages and working conditions of the employees of the Lake Valley Dairy and Wagner Dairy. In the *Lauf* v. *Schinner* case, it is simply a question of representation. Our case is accordingly more clearly within the definition of the Statute.

In the case of *Levering & Company* v. *Morrin,* 71 Fed. (2nd) 284 (C. C. A. 2, 1934) plaintiff association wished to maintain an open shop. Defendant labor union, by sympathetic strikes, persuasion, picketing, etc., of various third persons sought to bring economic pressure on the plaintiff to change his method of doing business from an open shop to a closed shop by appeals to those third persons who have business relationships with the plaintiff. It is held that the controversy between the plaintiff and defendant union is a labor dispute. The union's attempt to obtain a closed shop in that case is analogous in the union's attempt to obtain a union shop in the case at bar—that is to say, to cause the Lake Valley Dairy and the Wagner Dairy to operate on a union shop basis. The purposes are to benefit the defendant union members by causing employment of those union members now unemployed, to protect and preserve the present union scale, working conditions, and hours of labor by preventing inroads due to disastrous competition, and by making the defendant union stronger by increasing the number of men engaged in the milk industry and by incorporating them as members of the defendant union.

This Court denied *certiorari* of this decision in 293 U. S. 595 (1934).

In the case of *Senn* v. *Tile Layers Union,* 301 U. S. 468 (1937) this Court in an opinion by Mr. Justice Brandeis, held that where the defendant union sought to require the plaintiff employer to sign a contract requiring among other

things, a covenant by the employer to refrain from participating in manual labor, that such controversy was a labor dispute; and therefore the provisions of the Wisconsin Anti-Injunction Act were applicable; so that the Wisconsin Supreme Court in finding a labor dispute did exist and denying injuctive relief, was not violating the plaintiff's rights under the Federal Constitution. Mr. Justice Brandeis found that both the means (*i. e.*, picketing and publicity) and the end *i. e.*, the condition that the employer refrain from manual labor, were not violative of the Federal Constitution.

See also *Grace Company* v. *Williams,* 96 Fed. (2d) 478 (C. C. A. 8, 1938) for a fact situation analogous to the case at bar where the Court held that the economic controversy *did* constitute a labor dispute.

Cf. *Blankenship* v. *Kurfman,* 96 Fed. (2d) 450, 455, 456 (C. C. A. 7, 1938).

Section 5 of the Norris-LaGuardia Act prohibited the issuance of an injunction to restrain peaceful picketing even though defendants were combining to restrain interstate commerce.

This Court has never passed upon the problem of construing the meaning of Section 5 of the Norris-LaGuardia Act. (See Appendix, p. 3.)

The statute is clear to the effect that so long as persons participating or interested in a labor dispute are engaged in acts or performing activities that fall within the provisions of section 4 of the Norris-LaGuardia Act, no United States Court shall have jurisdiction to issue an injunction on the ground that such acts amounted to "an unlawful combination or conspiracy." As a matter of literal meaning, the statute includes combination or conspiracy which

is claimed to be unlawful on the ground that it is a combination in restraint of trade under the Sherman Act.

The lower court decisions are conflicting. The great weight of authority follows the literal meaning of this section. The decision in the case of *Wilson Co.* v. *Birl,* 105 Fed. 2nd, 948 (which affirmed the decision of the District Court as reported in 27 Fed. Sup. 915), is substantially to the effect that peaceful picketing by a labor union in the course of a labor dispute may not be enjoined by the federal court even though such peaceful picketing results in a restraint of trade within the meaning of the Sherman Act. See 105 Fed. 2nd at 952 and 28 Fed. Sup. at 918.

In *International Brotherhood of Teamsters* v. *International Union of United Brewery Workers,* 106 Fed. 2nd, 871 (C.C.A., 9, rehearing denied Nov. 8, 1939, reversing 25 Fed. Sup. 870), in substance it was held the labor union activities in a labor dispute expressly described by Section 4 of the Norris-LaGuardia Act could not be restrained by injunction in the Federal Court even though such activities resulted in a restraint or interference with interstate commerce.

See 106 Fed. 2nd at 876.

Other cases where courts have held that the existence of restraint on interstate commerce as a result of union activity does not warrant the enjoining of the particular union activity falling within the purview of Section 4 of the Norris-LaGuardia Act are as follows:

Grace Company v. *Williams,* 96 Fed. 2nd, 478 (C. C. A., 8, 1939);

Diamond Hosiery v. *Leader,* 20 Fed. Sup. 467 at 496, 470 (D. C. Penn. 1937);

Houston Motor Lines v. *Local Union,* 24 Fed. Supp. 619 (D. C. Okla.);

Pauly Jail Building v. *International Ass. of Bridge Workers,* 29 Fed. Supp. 15 (D. C. Mo. 1939);
Terrio v. *S. N. Nielsen Co.,* 30 Fed. Supp. 77 at 81 (D. C. La. 1939).

The authorities opposed to the foregoing decisions are:

Mayo v. *Dean,* 82 Fed. 2nd 554 (C. C. A. 5, 1936);
Fehr Baking Co. v. *Bakers Union,* 20 Fed. Supp. 691 (D. C. La. 1937).

The Norris-LaGuardia Act deprives a Federal District Court of jurisdiction to enjoin peaceful picketing by a union in a labor dispute even though such peaceful picketing was designated as a "secondary boycott" prior to the passage of the Norris-LaGuardia Act.

The majority of the Circuit Court of Appeals held that the defendants' activities of peacefully picketing the retail milk stores were restrainable because they constituted a secondary boycott. The use of the term "secondary boycott" by the Circuit Court of Appeals is an attempt to follow the decision of cases such as *Duplex Press* v. *Deering,* which the Norris-LaGuardia Act specifically sought to repeal. The decision in *Wilson Co.* v. *Birl,* 105 Fed. 2nd, 48, is squarely opposed to the decision of the majority of the Seventh Circuit. In addition the decision in the other cases we have cited *supra* are in substance also opposed to the ruling of the Circuit Court of Appeals for the Seventh Circuit on this point.

Under the literal meaning of the Norris-LaGuardia Act, the Federal Court could not restrain the acts specifically described in Section 4. (See Appendix pp. 2-3.) If defendants' acts fell into the categories of Section 4 it would not make any difference that their acts were such that

under the older decisions could be described as amounting to a secondary boycott. This is clearly shown in the report of the then Representative LaGuardia.

See H. R. Rep. No. 669, 72nd Cong. 1st session (1932) at p. 10.

B.

Peaceful picketing of Chicago retail milk stores by a Chicago local craft union for the purpose of unionizing a Chicago dairy is not a restraint of interstate trade or commerce within the prohibitions of Section 1 of the Sherman Act even though there is a decrease in the sales of the bottled milk which was originally produced on Wisconsin farms.

The facts concerning interstate commerce are stated in the opinion of the Court.

There is no showing in the Record that the amount of milk shipped from Wisconsin to respondent, Lake Valley Farm Products, Inc., was decreased as a result of the picketing. The respondent, Lake View Co-Operative of Watertown, Wisconsin, sold its milk to various other dairies in the City of Chicago.

The learned opinion of the dissenting Justice Treanor in this case (R. 370) first discusses the finding and conclusion of the trial court "that the defendants' activities did not burden or affect interstate commerce within the prohibitions of the Federal Anti-Trust laws." His discussion at Rec. 370-376 touches upon the decisions of this Court most strongly relied upon by your petitioners. To avoid repetition we respectfully adopt the reasoning and discussion of Justice Treanor and respectfully refer the Court to the indicated portions of his opinion.

The decisions of this Court upon which we so rely are as follows:

Levering & Co. v. *Morrin,* 289 U. S. 103 (1933).
United Leather Workers v. *Herkert,* 265 U. S. 457, 469, 471 (1924).
United Mine Workers v. *Coronado Coal Co.,* 259 U. S. 344, 403, 407, 408, 410-411 (1922).
Industrial Association v. *United States,* 268 U. S. 64, 77-78, 80-82, 84 (1925).

As one of the reasons for the granting of certiorari it is urged that the 7th Circuit decision on the interpretation of the Sherman Act is squarely in conflict with the decision by the Circuit Court of Appeals for the Third Circuit decided on the same day, November 29th, 1939, in the case of *Leader* v. *Apex Hosiery Co.,* 108 Fed. 2nd, 71 (C.C.A., 3, rehearing denied Dec. 27, 1939, Advance Sheets of Jan. 29, 1940). The restraint in that case consisted of the activities of a labor union in causing a sit-down strike in the employer's factory and physically preventing the employer from shipping a substantial amount of its finished product to fulfill orders, eighty per cent of which were from customers outside the State of Pennsylvania. It was held in that case that as a matter of law, the trial court should have ruled that there was no restraint of trade within the meaning of the Sherman Act as construed by this Court in numerous decisions.

For the purpose of conciseness we refer to this Circuit's persuasive discussion and analysis of the decisions of this Court upon which we rely under this present heading.

In the case at bar there is no showing that a single quart of milk less was carried in interstate commerce as a result of petitioner's picketing that would have been carried in interstate commerce had there been no picketing. The

only difference between the two decisions is the difference between production of goods in the state in question, and the consumption of goods in the state in question. The principles of the Sherman Act do not depend for their application upon the question whether restraint comes in the shipping outside of the state or upon the coming of goods into the state. These two cases are squarely irreconcilable. Their conflict upon this vital question of Federal law is adequate ground in itself for review by this Court to clarify the conflict between the Court Courts of Appeals.

The defendant union was a local union limited to the City of Chicago and adjacent environs. The activity of the Union was local—it was limited to picketing in the City of Chicago. The purpose of the union was local, *i.e.*, the unionization of Chicago dairies. The source of the milk handled by the dairy was immaterial so far as the defendant union was concerned. The economic controversy would have continued regardless whether the milk was produced in Illinois or whether it was produced in New York and shipped to Illinois. The only basis for dispute was the fact that plaintiff, Lake Valley Farm Products, Inc. was not a union dairy insofar as defendant union was concerned.

The effect of the picketing insofar as interstate commerce was concerned, so far as the record shows, was entirely indirect, remote and removed from the traffic in interstate commerce. There was no interference with transportation. Plaintiffs attempted to rely on the inference that if the retail milk store did not sell its product to the public it would necessarily follow that such milk would not be shipped from Wisconsin. But if the public did not buy the retail stores picketed by defendant but bought at other stores handling Wisconsin milk, there would be no diminution of the amount of milk flowing in interstate commerce. The evidence showed that the Lake View Co-Operative of Watertown, Wisconsin, did not suffer any

diminution in the amount of milk it shipped into Chicago. Presumably the public was continuing to buy its milk even though it did not buy milk handled by plaintiff, Lake Valley Farm Products, Inc.

Next, as to the "reasonableness" of restraint this Court in the *Appalachian Coals* case has emphasized that the economic features of the situation are controlling. Unionization of milk wagon drivers in Cook County, beginning in 1902, has obtained a living wage, decent working conditions. The attempted unionization of Lake Valley Farm Products, Inc., is for the purpose of protecting the gains made and for the purpose of avoiding drastic reductions in salaries and deterioration of working conditions. The economic factor is the conflict between entrepreneurs such as the Lake Valley Farm Products, Inc., which seeks to obtain larger profits for its stockholders by means of its particular method of doing business, which will injure union milk wagon drivers in Chicago, and the union which seeks to compete in an attempt to retain the union scale and union working conditions by its appeal to the public.

The effect upon interstate commerce which results from this conflict is a temporary effect in view of all factors considered. The defendants' activities in the attempt to unionize plaintiff, Lake Valley Farm Products, Inc. are reasonable. The effect upon interstate commerce considered in the light of such reasonable activity is not punishable as a violation of the Sherman Anti-Trust Act.

The entire problem of application of Sherman Act to "labor unions" and their activities is discussed in the authoritative work of Berman "Labor and the Sherman Act" (1930) at 85, 86, 12, 22.

See also the collections of authorities in

39 Columbia L. R., 1283 (Dec. 1939).
40 Columbia L. R. 14 (Jan. 1940).

C.

Attempts by a Chicago Milk Wagon Drivers' Union to unionize all Chicago non-union dairy drivers of milk wagons did not constitute a monopoly or an attempt to monopolize within the prohibitions of Section 2 of the Sherman Act.

The majority of the court found that the object of the defendant union was to unionize all distributors of milk sold in Chicago, and that if they did so, the defendant union for all practical purposes would have a complete monopoly over the distribution of milk in Chicago.

The court cites no case and does not expressly refer to the Sherman Act (R. 367).

It is respectfully suggested that this finding is without foundation in law. This court has *never* decided that the activities of any legal union constituted a monopoly within the provisions of Section 2 of the Sherman Anti-Trust Act. The most pertinent language is to the contrary in the decision of the *American Steel Foundries* v. *Tri City Trade Council,* 257 U. S. 184. Mr. Chief Justice Taft said:

> "In a lawful economic struggle or competition between employer and employee as to the share or division between them of the joint product of labor and capital. To render this combination at all effective, employees must make their combination extend *beyond one shop.* It is helpful to have as many as may be in the *same trade* in the same community united, because in the competition between employers they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their mem-

bership and especially among those whose labor at lower wages will injure their whole guild." 257 U. S. at 209. (Italics ours.)

And again the court said:

"The *Hitchman* case was cited in the *Duplex* case, but there is nothing in the ratio decidendi of either which limits our conclusion here or which requires us to hold that the members of a local labor union and the union itself do not have sufficient interest in the wages paid to the employees of *any employer* in the community to justify their use of lawful and peaceful persuasion to induce *those employees* to refuse to accept such reduced wages and to quit their employment." 257 U. S. at 212-213. (Italics ours.)

No decision of this court can be cited holding that the attempted unionization by union of all employers of one locality is a violation of the monopoly provisions of the Sherman Anti-Trust Act.

One decision of this Court that tends to support *our* contention is *National Assoc. of Glass Manfrs.* v. *U. S.*, 263 U. S. 403 (1923).

The decisions of this court with respect to business combinations are clearly to the contrary. In *Standard Oil Co.* v. *United States*, 221 U. S. 1 at Page 66, this court laid down the rule of reason with regard to monopolies as constituting a violation of the Sherman Act. Subsequent decisions in the *American Tobacco* case, the *United States Steel* case, the *United Shoe Machinery* case having indicated that the national control of a national industry may be substantially concentrated in the hands of one corporation substantially without constituting a violation of the Sherman Act.

The unionization of an industry does not *per se* constitute a monopoly of commerce or trade. The fact that all the employees of an industry are unionized does not constitute the monopoly of trade dealt with by the provisions of Section 2 of the Anti-Trust Act. (See Appendix, p 6.) Clearly that section pertains to the activities of businessmen who seek to directly affect trade. Even if every milk wagon driver in the City of Chicago belonged to the defendant union, how could that be said to constitute a monopoly of trade?

Other cases to the effect that the unionization of an entire local industry is not an illegal act or an illegal purpose are as follows:

Gasaway v. *Borderland Coal,* 278 Fed. 56 (C. C. A. 7, 1921); *Exchange Bakery* v. *Rifkin,* 245 N. Y. 260, 157 N. E. 130 at 132 (appeal dismissed 58 Sup. Ct. Reporter 650); *Williams* v. *Quill,* 277 N. Y. 1, 12 N. E. 2nd 547 at 549; *National Fireproofing* v. *Mason Bldr's Ass'n.,* 169 Fed. 259 (C. C. A. 2, 1909).

D.

Section 20 of the Clayton Act of 1914 legalizes the activities of a craft labor union that seeks to enlist public support in an economic dispute over the signing of a union contract with a non-union dairy by means of placards or banners carried by union members on the public highway in front of retail milk stores selling to the public the products of such non-union dairy which are delivered to the store by members of a competing industrial union.

This court has not been called on to pass upon the meaning of Section 20 of the Clayton Act since the enactment of the Norris-LaGuardia Act in 1932. (See Appendix, pp. 7-8.) We urge that this court at this time should pass upon

the meaning of Section 20 of the Clayton Act so far as it purports to legalize the classes of activities therein specified and that by such construction, this court should hold that activities of peaceful picketing conducted at a retail store vending to the public the products of an employer with whom the picketing union is engaged in a labor dispute is a *legal* act regardless whether or not such activity is described by the older decisions as a "secondary boycott".

One decision of a Federal District Court supports this contention namely, *Diamond Hosiery* v. *Leader*, 20 Fed. 467 at 470.

Mr. Justice Brandeis in his dissenting opinion in *Duplex Press* v. *Deering*, 254 U. S. 443 at 487, 488, stated in substance that in his opinion Congress by passing Section 20 of the Clayton Act had legalized the so-called "secondary boycott".

The importance of permitting free publicity by labor organizations in a democratic society has been recognized since the decision in the *Duplex Press* case in 1921 by the legislatures, both Federal and State, by judges, and by scholars in the field of economics and sociology.

It is also respectfully suggested that to hold that the provisions of the Norris-LaGuardia Act preclude the issuance of an injunction against the so-called "secondary boycott" but that such so-called secondary boycott is still an illegal act subject to suit for damages on the law side of the Federal court is to leave the law in a chaotic condition. The economic and social principles that led to the enactment of the Norris-LaGuardia Statute, the National Labor Relations Act and the Anti-Strike Breaking Act lead to the conclusion that Section 20 of the Clayton Act legalized the peaceful picketing of the stores vending the "unfair employer's" products.

Section 20 of the Clayton Act construed with Section 6 of the Clayton Act in the light of such recent legislation should result in the overruling of the decisions in *Duplex Press* v. *Deering,* and *Bedford Stone* v. *Journeymen's Association.*

E.

The due process clause of the 14th Amendment to the Federal Constitution prevents a Federal equity court from restraining and enjoining union members and working men from carrying a banner or placard on the public highways as a means of communicating information to the public in an attempt by the union to have the public assist the union in its economic controversy with a non-union dairy and with a competing union.

The decisions of this court seem to indicate that if a State statute or a municipal ordinance were so worded as to prevent the defendant union from peacefully picketing the retail stores in the City of Chicago vending the products of plaintiff, Lake Valley Farm Products, Inc., to the public, such statute or ordinance would be held invalid by this court as depriving union members of their rights to free speech within the meaning of the due process clause of the 14th Amendment to the United States Constitution.

Among other recent rulings by this court that would tend to sustain the foregoing suggestion, we refer to the allowance of certiorari in the case of *Thornhill* v. *State of Alabama* (#514, Oct. 1939 Docket) and the noting of probable jurisdiction in the case of *Carlson* v. *California* on Monday, February 12th, 1940, #667, Oct. 1939 Docket.

Does the fact that the restraint is imposed by a Federal Equity Court by decree change the rule of free speech?

We respectfully urge that a court is subject to the constitutional prohibitions just as a state legislature would be.

This problem of the deprival of the rights to free speech by equity decree has been before this court at the Oct. 1939 Term in the cases of:

Shapiro v. *Evening Times* (Docket No. 85, certiorari denied Oct. 9, 1939).

Milk Wagon Drivers Union v. *Meadowmoor Dairies, Inc.* (Docket No. 353, certiorari denied Oct. 23, 1339).

American Federation of Labor v. *Swing* (Docket No. 615, certiorari denied February 5, 1940).

The case at bar involves a *Federal* Equity Court restraint.

It is to be noted that the Circuit Court of Appeals construed the denial by this court of a petition for certiorari in the case of *Milk Wagon Drivers' Union* v. *Meadowmoor Dairies, Inc.*, as a ruling that the constitutional rights of free speech do not permit peacefully picketing if such picketing constitutes a secondary boycott. But the question more correctly stated is, whether or not a court may describe peaceful picketing as a secondary boycott if peaceful picketing is an exercise of the right to free speech?

This question should be decided by this court at some time. The case at bar presents an opportunity for full and complete analysis of the economic and social effects of a decision either sustaining peaceful picketing as an exercise of the right to free speech or as denying it on the ground that it constitutes a tort, *i. e.*, secondary boycott.

Cf. Restatement of the Law of Torts, Vol. 4, Sect. 779 at p. 109-111; and Sect. 799 at p. 144-146.

Under the decisions of this Court, it is now well settled that freedom of speech and freedom of press, which are expressly protected by the First Amendment from infringement by the Federal Congress are among the fundamental personal rights and liberties which are protected by the 14th Amendment from invasion by State action.

Lovell v. *Griffin*, 303 U. S. 444 at 450, and other cases cited (1938).

The right to free speech has been characterized as one which is of the very essence of a scheme of ordered liberty.

Palko v. *Connecticut*, 302 U. S. 319 at 325 (1937).

It is well settled that the due process clause applies to action by State Judiciary as well as by Legislative declaration.

In the case of *Brinkerhof Trust Company* v. *Hill*, 281 U. S. 673 (1930), this court speaking through Mr. Justice Brandeis, said:

> "The violation is none the less clear when that result is accomplished by the State Judiciary in the course of construing an otherwise valid (citing case) State statute. The federal guaranty of due process extends to State action through its judicial, as well as through its legislative, executive or administrative branch of Government (citing cases)." 281 U. S. at 680.

To the same effect, see Ex Parte Virginia, 100 U. S. 339 at 347.

In the *Scottsboro* cases this Court held that individuals were deprived of their liberty without due process of law as a result of ruling by State courts on problems of ordi-

nary procedure such as right of an accused defendant to have counsel at his trial.

Powell v. *Alabama,* 287 U. S. 45 (1932).

Similarly the recent analogous decision in *Chambers* v. Florida (decided Feb. 12, 1940).

In *Snyder* v. *Milwaukee,* (*Schneider* v. *Irvington*) this Court reversed the conviction of a "union picket" convicted of violating an ordinance by distributing handbills on a "picket line." Much of the argument there made to the effect that the "legislature" violated the free speech provisions of the Federal Constitution applies with at least equal force to the case at bar. See 60 Sup. Ct. Rep. 146 at 150 (Nov. 22, 1939).

In *Senn* v. *Tile Layers Union,* 301 U. S. 468, Mr. Justice Brandeis stated that:

> "Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, *for freedom of speech is guaranteed by the Federal Constitution.*" 301 U. S. at 478. (Italics ours.)

Again, at page 480, the court in speaking of the picketing, said:

> "The sole purpose of the picketing was to acquaint the public with the facts and, by gaining its support, to induce Senn to unionize his shop." 301 U. S. at 480.

And again,

> "The unions acted and had the right to act as they did, to protect the interests of their members against the harmful effect upon them of Senn's Action." 301 U. S. at 481.

And again,

> "There is nothing in the Federal Constitution which forbids unions from competing with non-union concerns for customers by means of picketing as freely one merchant competes with another by means of advertisement in the press, by circulars, or by his window display. Each member of the unions, as well as Senn, has the right to strive to earn his living. Senn seeks to do so through exercise of his individual skill and planning. The union members seek to do so through combination. Earning a living is dependent upon public favor. To win the patronage of the public, each may strive by legal means." 301 U. S. at page 482.

Again,

> "It is true that disclosure of the facts of a labor dispute may be annoying to Senn even if the method and means employed in giving the publicity are inherently unobjectionable, but such annoyance like that often suffered from publicity in other connections, is not an invasion of the liberty guaranteed by the Constitution." 301 U. S. at 482.

In the case at bar the union was trying to achieve the same goals and by the same means found constitutional by this court in the *Senn* case.

In the case of *American Steel Foundries* v. *Tri-City Council*, 257 U. S. 184 (1921), this Court said with reference to picketing:

> "We are a social people and the accosting by one of another in an inoffensive way and an offer by one to communicate and discuss information with a view to influencing the other's action are not regarded as aggression or a violation of that other's rights." 257 U. S. at 204.

CONCLUSION.

It is respectfully submitted that this case involves several problems of national importance calling for final determination by this Court. The "area of non-restrainable" economic conflict was broadened by the Norris-LaGuardia Act but the Circuit Court of Appeals for the 7th Circuit has erroneously restricted the applicability and effect of the Norris-LaGuardia Act. At the same time the Circuit Court of Appeals for the 7th Circuit has erroneously broadened the domain of the Sherman Act by construing it in such fashion as to place almost every labor dispute subject to the prohibitions of the Sherman Act.

Wherefore it is respectfully prayed that a writ of certiorari should be granted herein and this Court should review the decision of the Circuit Court of Appeals for the 7th Circuit and finally reverse it.

Respectfully submitted,

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APPENDIX OF STATUTES

APPENDIX OF STATUTES.

Norris-LaGuardia Act.

Sec. 1. That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act. (Act of March 23, 1932, c. 90, Sec. 1; 47 Stat. 70; 29 U. S. Code, Sec. 101.)

Sec. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of

such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted. (Act of March 23, 1932, c. 90, Sec. 2; 47 Stat. 70; 29 U. S. Code, Sec. 102.)"

Sec. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State.

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interest in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is de-

scribed in section 3 of this Act. (Act of March 23, 1932, c. 90, Sec. 4; 47 Stat. 70; 29 U. S. Code, Sec. 704.)

Sec. 5. No Court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in Section 4 of this Act. (March 23, 1932, c. 90, Sec. 5; 47 Stat. 71; 29 U. S. Code, Sec. 105.)"

Sec. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof. (March 23, 1932, c. 90, Sec. 6; 47 Stat. 71; 29 U. S. Code, Sec. 106.)

Sec. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the

threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief.

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection. * * * [March 23, 1932, c. 90, Sect. 7, 47 Stat. 72; 29 U. S. C. A. Sec. 107.]

Sec. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration. (March 23, 1932, c. 90, sec. 8; 47 Stat. 72; 29 U. S. Code Sec. 108.)"

Sec. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly

included in said findings of fact made and filed by the court as provided herein. (March 23, 1932, c. 90, Sec. 9; 47 Stat. 72; 29 U. S. Code, Sec. 109.)

Section 13:

When used in this act and for the purposes of this act —(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft or occupation.

(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to

arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

* * *

(Act of March 23, 1932, c. 90, Sec. 13; 47 Stat. 73; 29 U. S. Code, A. Sec. 113.)

SHERMAN ACT.

Section 1: Every contract combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. * * * Every person who shall make any such contract or engage in any such combination or conspiracy, hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. (July 2, 1890, Chap 647, Sec. 1, 26 Stat. 209; 15 U. S. Code, Sec. 1; as amended by Public Act No. 314, 75th Congress, approved and effective August 17, 1937.)

Section 2: Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. (July 2, 1890, Chap. 647, Sec. 2, 26 Stat. 209; 15 U. S. Code, Sec. 2).

CLAYTON ACT.

Section 6: That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations, from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws. (Oct. 15, 1914, Chap. 323, Section 6, 38 Stat. 731; 15 U. S. Code, Sec. 17.)

* * *

Section 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising or persuading others by peaceful means so to do;

or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States. (Oct. 15, 1914, c. 323, sec. 20, 38 Stat. 738; 29 U. S. Code, sec. 52).

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 20

MILK WAGON DRIVERS' UNION, LOCAL NO. 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, A VOLUNTARY ASSOCIATION; ROBERT G. FITCHIE, JAMES KENNEDY, STEVE SUMNER, FRED C. DAHMS, F. RAY BRYANT, ALVIN F. RICHARDS and JOSEPH L. PATTERSON,

Petitioners,

vs.

LAKE VALLEY FARM PRODUCTS, INC., a corporation; AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION NO. 819, A VOLUNTARY UNINCORPORATED ASSOCIATION; LAKE VIEW CO-OPERATIVE OF WATERTOWN, WISCONSIN, AN AGRICULTURAL COOPERATIVE CORPORATION OF THE STATE OF WISCONSIN,

Respondents.

BRIEF OF PETITIONERS IN SUPPORT OF PETITION FOR CERTIORARI AND BRIEF THEREWITH.

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No. 20

MILK WAGON DRIVERS' UNION, LOCAL NO. 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, A VOLUNTARY ASSOCIATION; ROBERT G. FITCHIE, JAMES KENNEDY, STEVE SUMNER, FRED C. DAHMS, F. RAY BRYANT, ALVIN F. RICHARDS and JOSEPH L. PATTERSON,

Petitioners,

vs.

LAKE VALLEY FARM PRODUCTS, INC., a corporation; AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION NO. 819, A VOLUNTARY UNINCORPORATED ASSOCIATION; LAKE VIEW CO-OPERATIVE OF WATERTOWN, WISCONSIN, AN AGRICULTURAL COOPERATIVE CORPORATION OF THE STATE OF WISCONSIN,

Respondents.

BRIEF OF PETITIONERS IN SUPPORT OF PETITION FOR CERTIORARI AND BRIEF THEREWITH.

To the Honorable Charles Evans Hughes, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Petition for certiorari was filed by petitioners herein on February 28, 1940. Respondents filed an Answer. On April 1, 1940, this Court granted certiorari.

In following the nomenclature of our petition and respondents' answer, we shall refer to petitioners as the defendants, and to the respondents as the plaintiffs—as the parties were entitled in the trial court.

Defendants adopt and rely on the petition for certiorari. Defendants are filing *this* brief mainly in reply to and in refutation of arguments and authorities advanced in plaintiffs' answer. Plaintiffs' answer does not follow the outline of our original petition. For the purposes of clearness in this brief, we shall follow the outline of plaintiffs' answer.

Preliminary.

Avoiding Previous Judicial Mistakes.

As shown in our petition (p. 17), the problems for determination presented by this case are of tremendous significance to our national social structure. The solution of these problems is achieved only by jurisprudential statesmanship. But the technique and the reasoning adopted by plaintiffs' answer illustrates to a striking degree the manner in which similarly broad jurisprudential problems have been presented to and disposed of by courts that failed to recognize that *personal* social and economic beliefs or opinions are not adequate or sufficient to solve national economic and social problems.

This technique previously employed by courts has failed to solve problems of economic competition, *i.e.* industrial conflict between employers and employees. Such failure has been graphically demonstrated in and by the following authorities:

Frankfurter & Greene: The Labor Injunction Chap. 1, esp. at pp. 3, 5-17, 24-46, and authorities there cited.

Magruder: "A Half Century of Legal Influence

upon the Development of Collective Bargaining," 50 Harv. L. Rev. 1071 (1937), esp. at pp. 1071, 1078-1086, and authorities there cited.

Hellerstein: "Secondary Boycotts in Labor Disputes," 47 Yale L. J. 340.

The tortuous history of labor cases in courts of Illinois is described in:

Beckner, "A History of Illinois Labor Legislation" (1929).

This judicial error was most vividly demonstrated in decisions by Federal courts involving "Labor and the Sherman Act."

Frankfurter & Greene: Opus cited, at p. 7-11.

Berman: "Labor and the Sherman Act" (1930).

Terbogh: "The Application of the Sherman Act to Trade Union Activities," 37 J. Pol. Economy 203 (1929).

Quigg: "Trade Union Activities and the Sherman Act," 147 Annals 51 (Jan., 1930).

"Labor and the Sherman Act," 49 Yale L. J. 518, at 522.

The broad problems of jurisprudence presented in our original petition involve:

1. A recognition of the Federal Legislative establishment of our national public policy by the Norris-La Guardia Act which was enacted to obviate the judicial construction of Sections 6 and 20 of the Clayton Act of 1914 by the Federal Courts.

2. An understanding of the complex problems of industrial conflict between employers and employees.

3. An adjustment of the delicate balance between federal and state power in the administration of the Anti-Trust laws of the United States.

On these problems:

Plaintiffs would have this Court construe the Norris-La Guardia Act so that the situation should be the same

as if the Norris-La Guardia Act had merely re-enacted Sections 6 and 20 of the Clayton Act.

Plaintiffs would have this Court construe "legitimate" activity of labor unions and its members in such a way as to return the federal courts into the business of "governing" economic competition by means of injunctions.

Finally, plaintiffs would have this Court construe the federal Anti-Trust laws so that, for all practical purposes, the line of distinction between federal and state power would be abolished by the means of having federal courts follow the state law in determining whether unions have violated Anti-Trust laws.

This unsound technique and faulty reasoning runs throughout each of the three sections of plaintiffs' answer.

FACTS.

Plaintiffs criticize our summary statement of the matter involved.

It must be remembered that both the Master (esp. at R. 220-221) and the District Court found the fact in favor of the defendants and against the plaintiffs. The trial court's decree specifically stated that the equities were with the defendants (R. 250), and dismissed the complaint for want of equity (R. 252).

The opinion of the majority of the Circuit Court of Appeals seemed to treat the Master's finding of facts as immaterial to the issues of law passed upon by the District Court. This was erroneous.

At the very least, it is undisputed that the Circuit Court of Appeals did not reverse the Master's findings on the

ground that it was contrary to the manifest weight of the evidence.

Under Rule 53, e, 2, of Rules of Civil Procedure, the Master's findings of fact are accepted as correct unless clearly erroneous. This is probably the same as former equity rule 61½. This includes the "inferences" drawn by the Master therefrom.

Plaintiffs contend that the "motive" for defendant's conduct was to "fix the price of milk" or to "prevent the sale of cut-rate milk." But the Master and the District Court found squarely against plaintiffs on this issue of fact.

In addition, plaintiffs err in confusing "motive" with "economic result". Defendant's purpose or object is unionization of non-union dairies.

cf. Sect. 777, Restatement on Law of Torts, 4 Torts A. L. I. p. 163.

Facts Overlooked by Plaintiff.

The plaintiff dairy obtains milk wagon driver delivery service from its vendors and their helpers at a "wage return" lower than union scale (R. 290, 300, 315). The vendors and their helpers work under conditions that are less favorable than union working conditions, as to hours, vacations, workmen's compensation protection, seniority, etc. (R. 312, 337-338).

There is no substantial difference between vendors or regular drivers insofar as the services performed (R. 303, 311).

The picketing of the retail stores vending plaintiff dairy's milk products was for the purpose or object of unionizing non-union dairies (R. 280, 350), including the plaintiff dairy.

Wagner Dairy, one of the original plaintiffs in the trial court, was requested to and refused to sign a union contract with the defendant union.

Lake Valley Dairy, also known as Lake View Dairy, had not only been approached by defendant union to sign a union contract but had actually commenced to unionize and then had changed its mind and refunded dues collected from its employees (R. 281-282, 284, 288, 306, 320, 332).

The defendant union attempted to by peacefully persuade retail storekeepers to handle and sell *union milk* and not to sell plaintiff dairy's *non-union* milk.

The storekeepers in many instances chose to sell plaintiff dairy's non-union milk regardless of the effect upon the wage scale and working conditions of the members of defendant union (R. 327, 330).

Picketing stores was "directed" against the non-union quality of plaintiff dairy's milk and not at its price (R. 287, 328, 333, 336, 337-338, 339, 350).

One hundred nineteen out of one hundred twenty *union* dairies in Chicago sold some "cut-rate milk" (R. 282, 317-318, 344).

Plaintiff dairy's milk was sold at varying prices in retail stores with prices ranging just as high as the highest prices charged by union dairies (R. 331).

The plaintiff C. I. O. Union was in open economic competition with the defendant A. F. of L. Union on the issue of unionization of plaintiff dairy workers. The retail storekeepers were given C. I. O. Union cards, were told that the *drivers* were unionized, and were told to place such union cards in the window (R. 60, 277, 278, 279, 284, 299).

The sign was put in by the C. I. O. Union to put the defendant union out of business (R. 288, 329, 330).

Milk prices were not inevitably correlated with union wages for in at least two instances milk prices of union milk were decreased though union wages were increased (R. 343). There was no price agreement between the union dairies and the union (R. 347).

Picketing of a retail store did *not* in *all* cases result in a reduction of the amount of milk sold (R. 281, 330).

There was no showing by plaintiffs of the reduction in amount of milk shipped in interstate commerce from Wisconsin (R. 303).

The decisions in other cases arising out of attempts by defendant union to unionize other Chicago non-union dairies reflect similar facts. See:

Meadowmoor Dairies v. *Milk Wagon Driver's Union*, 371 Ill. 377, pending on certiorari in this court, No. 1, Oct. Term. 1940.

Maywood Farms v. *Milk Wagon Driver's Union* (Appell. Ct. Ill., 1st District C. C. H. Labor Law Service (2nd Ed.), ¶18, 453).

1 Labor Cases 1311 (Oct. 30, 1939).

Ellingsen v. *Milk Wagon Drivers' Union* (Ill. Supreme Court, April 10, 1940; now pending on petition for rehearing).

C. C. H. Labor Law Service (2nd ed.), ¶ 18, 613.

ARGUMENT.

Replying to Plaintiffs' I.

Alleged Illegality of Union Purpose.

Plaintiffs' entire argument about "illegality" under this heading is unsound because it fails to recognize that the *only* alleged basis of federal *jurisdiction* was a violation of the Sherman Anti-Trust Act.

Plaintiffs' complaint is substantially based on this theory. The Circuit Court of Appeals reversed on this theory (R. 366, 367). Consequently, the only kind of illegality upon which plaintiffs may rely is an alleged violation by the defendants of the Federal Anti-Trust laws. This true both as to alleged illegality of purpose *or* means.

This is not a case where jurisdiction of the federal court may be based on diversity of citizenship. Accordingly, the substantive law of Illinois as to the "legality or the illegality" of the defendants' conduct is not involved in the case at bar.

Plaintiffs seek an injunction on the alleged ground that the defendants violated the Federal Anti-Trust laws. Their claim for injunction is based upon Section 16 of the Clayton Act (Oct. 15, 1914, C. 323, Sect. 16, 38 Stat. 737, 15 U. S. C. A., Sect. 26). This statute for the first time granting injunction to a private suitor was passed at the same time as Sections 6 and 20 of the Clayton Act giving certain immunities to labor unions and their activities (Clayton Act, Sect. 6, Act of Oct. 15, 1914, C. 323, Sect. 6,

38 Stat. 731; 15 U. S. C. A. 17; Clayton Act, Sect. 20, Act of Oct. 15, 1914, C. 323, Sect. 20, 38 Stat. 738. 29 U. S. C. A. Sect. 52). The construction of Sect. 16 should not render nugatory the provisions of Sects. 6 and 20. (cf. Powell: 13 Academy of Pol. Sci. Proc. 54 (1928.)) (See our petition, appendix 7-8.)

This suit is not like a suit at law for money damages as in the case of *Apex Hosiery* v. *Leader*, where the suit is under Section 7 of the Sherman Act (July 2, 1890, C. 647, Sect. 7, 27 Stat. 210, 15 U. S. C. A. Sect. 15, and note Act of Aug. 27, 1894, Chap. 349, Sect. 77, 28 Stat. 570, repassed on Oct. 15, 1914, Chap. 323, Sect. 4, 38 Stat. 731).

This is not a case where the jurisdiction of the federal court was based upon both diversity of citizenship and alleged violation of the anti-trust laws. In those cases the general equity powers of the Federal Court could be availed of by the plaintiff.

To accept plaintiffs' conception of "illegality" under I of this heading would mean that the Norris-La Guardia Act and all other federal legislation based upon the premise that unionization of workingmen is to be encouraged would be defeated by a judicial process of construction of legislation. By such a construction courts would disregard the legislative will, and would substitute in its stead their own personal social and economic convictions.

For example, assuming that plaintiffs' statement at page 17 to the effect that there is no labor dispute (*i.e.*, the Norris-La Guardia Act does not apply) because there existed a conspiracy to prevent the sale of cut-rate milk and to control distribution of milk in Chicago, which may be assumed for the sake of argument to be illegal as constituting a tort by the substantive law of the state, even then the question of whether or not a federal court

will issue an injunction depends upon whether the facts indicate the existence of the kind of restraint condemned by the anti-trust laws, that is to say, a violation of the Sherman Act not immunized by the Clayton Act.

Plaintiffs' entire argument proceeds under the basic fallacy that in determining whether the object is legal or illegal a Court must look at the union objects and methods and measure the illegality by the substantive law of the state. This is error. We contend that prior to determining whether the conduct was legal or illegal we first must see whether the federal district court had jurisdiction. In this case the jurisdiction depended upon federal rights under the anti-trust laws. If there was no violation of the anti-trust laws there was no ground for jurisdiction. Hence the only illegality that can be considered is the violation of the anti-trust laws. Only after that determination can the "merits" be considered.

Distinction between "jurisdiction" and "merits" must be carefully kept in mind (49 Yale L. J. at 522-523, N. 31-32).

Plaintiffs' attempted distinction of our cases under the Norris-La Guardia Act on the ground that they refer only to legal objectives and legal means is therefore unsound because they are not limiting themselves to problems under the Anti-Trust Act.

There is another error inherent in plaintiffs' argument. Our cases were cited to show the definition of a labor dispute. Plaintiffs' error lies in assuming that the absence of a labor dispute is identical to the existence of a violation of the Sherman Act. In other words, they are arguing if there exists a conspiracy to commit an unlawful object or to attain a lawful object by unlawful means, then there is no labor dispute within the meaning of the Norris-La Guardia Act. That is the wrong ap-

proach. We say that even assuming the existence of an unlawful purpose, or the existence of unlawful means to accomplish a lawful purpose, according to the substantive law of the state, there still are two separate problems:

First, does the defendants' conduct violate the provisions of the Sherman Act? (Here the factual economic and social conditions are important and must be given full sway. *Appalachian Coals* v. *U. S.*, 288 U. S. 344, 361, 374.)

Second, even assuming the existence of a violation of the Sherman Act, under the terms of the Norris-La Guardia Act, may a federal court issue any injunction or any particular injunction restraining the union activity in question?

The Norris-La Guardia Act limits the jurisdiction of the federal courts in issuing injunctions in industrial disputes as follows: Where there is a labor dispute within the meaning of the Act, there can be no injunction against the acts described in Section 4, regardless of legality or illegality. Second, assuming a labor dispute exists, an injunction can be granted against only certain kinds of illegal acts, *i.e.*, fraud or violence. Third, assuming a labor dispute exists, Section 5 of the Norris-La Guardia Act makes it clear that any acts that may be illegal by virtue of a conspiracy in violation of the Anti-Trust Acts can *not* be enjoined in an industrial combat provided the acts fall within the specific enumeration and description of Section 4.

The authorities cited by this court in *Apex Hosiery* v. *Leader*, 84 Law Ed. 913 (especially authorities cited in the footnotes) will not be repeated in this brief. However, petitioners strongly rely on them.

At page 16 plaintiffs state, citing decisions, that if the object is not one of legitimate union concern, relief against "all means used" may be had by injunction.

This is unsound. First, all cases cited by plaintiffs with the exception of *Meadowmoor Dairies, Inc.* v. *Milk Wagon Drivers Union,* 371 Ill. 377, were decided *prior* to the passage of the Norris-La Guardia Act. The last case cited is now pending on the docket of this Court as No. 1, October Term, 1940 (certiorari allowed June 3, 1940).

A brief discussion of these decisions will be helpful in corroborating our contention that the purposes of the Norris-La Guardia Act and similar legislation should not be defeated by judicial misconstruction.

In the *Duplex Press* case, the facts were that although the object of the union was lawful in New York and the means used were lawful in New York, the majority of this Court held that nevertheless the union activities were enjoinable as a violation of the Federal Anti-Trust Laws. The Norris-La Guardia Act was passed as a result of this and similar decisions. Jurisdiction of the federal court was invoked on theories of both diversity of citizenship and violation of the Sherman Anti-Trust Law (254 U. S. at 461). The conduct complained of occurred *before* Section 20 of the Clayton Act was passed. Insofar as the section purported to legalize these acts the language is therefore *dicta.* At page 466 this Court recognized that it was immaterial under the anti-trust laws whether the activities (*i.e.,* the "boycott"), was lawful or unlawful under the common law of the state or under the state statutes since the question presented was under a federal statute. At page 467, this Court stated that restraint by peaceable persuasion is within the prohibition of the Sherman Act as well as restraint by force, and that there was no justification on the ground that the object was beneficial to the actors. Compare this reasoning

with the "rule of reason" cases under the Sherman Act. This is squarely in conflict with this rule and especially with the language in the *Appalachian* case. This conflicts with the language and reasoning in *Apex Hosiery* v. *Leader*. At page 469, this Court says the question is "what are the normal and legitimate objects of the union." Such objects may have been "unacceptable or illegal" in 1920 but may be "acceptable and legal" in 1940. At page 470, this Court states that the legalizing words of Section 20 of the Clayton Act refer only to the parties to the dispute, *i.e.*, the employer and *his* employees. The enactment of the Norris-La Guardia Act is legislative recognition that parties to an industrial dispute include more than the "immediate" employer-employee participants. At page 471 this Court, in discussing special privileges or immunities to a particular group, is apparently concerned with the employer's argument (shown at page 452) that to give the words of Section 20 their apparent literal significance would raise a serious question concerning their constitutionality on the ground that such special privileges would render the statute void under the rule of *Connelly* v. *Union Sewer Pipe Co.*, 184 U. S. 540. This possible fear has been eradicated by the decision of this Court in *Tigner* v. *Texas*, decided 1940.

At page 472, this Court reaches the nub in the case when it contrasts "proximate and substantial interests" of the union with its "fundamental or sympathetic interests" in the dispute.

The majority failed to recognize that the interest of the Pressmen's union in New York in the working conditions in the Michigan plant was proximate and substantial. Today, would it be doubted that the New York pressmen were proximately and substantially interested in the working conditions of their fellow union members

in the factory in Battle Creek, Michigan? If the majority had accepted such economic and social axiom, it would have agreed with the conclusion dictated by the force of reason in the dissenting opinion of Justice Brandeis. Justice Brandeis recognized that the problem before the Court involved the same judicial process as that leading up to the decision of Chief Justice Shaw in *Commonwealth* v. *Hunt,* decided in 1842—"a better realization of the facts of industrial life." This court relied upon the facts of industrial life in *Appalachian Coals* v. *U. S.,* 288 U. S. at 361, 372-377.

It is not so long ago that this Court invalidated the laws passed for the physical health and safety of employees on the ground that such laws interfered with the freedom of the individual to contract. (*Lochner* v. *New York,* 198 U. S. 45 (1905).) Mr. Justice Holmes in his dissenting opinion in the *Lochner* case vividly demonstrated the fallacies inherent in the Court's invalidation of such legislation (pp. 75-76).

Perhaps, as a result of this cogent dissent, this Court in conformance with modern social and economic conditions upheld the New York employers' liability law when the case came before it for the *second* time. Recognition of the necessity of legislation for the safety and welfare of workers as well as reimbursement for their physical injury was slowly but inevitably accepted by the courts of the land.

Similarly, when complex issues in economic competition came to the Court, as they did in such labor cases as the *Duplex Press* case, the majority was slow to recognize the economic realities that caused the New York members of the pressmen's union to consider the working conditions in the Battle Creek factory as having a direct and substantial injurious effect upon their eco-

nomic welfare. Due to judicial delay in recognizing and acting on the basis of economic realities, the federal legislature gave legislative recognition, approval and acceptance to these economic realities. This was done by not only recognizing the desirability of organization of working men, but also the encouragement of vital and real functioning of such organization. The prophetic utterances of Justice Brandeis in his dissenting opinion in the *Duplex* case with regard to the purposes of the Clayton Act (which were defeated by the majority opinion in the *Duplex Press* case) supplies emphatic clarity and realistic authority to our contention that the Norris-La Guardia Act was passed as a result of, in part at least, as a result of the fact that, "* * * The chief source of dissension with the existing law lay in the doctrine of malicious combination (citing cases) and in many parts of the country in the judicial declaration of the illegality at common law of picketing and persuading others to leave work." (at page 484.)

In a footnote Justice Brandeis calls attention to the report of the Committee on Industrial Relations of 1915, at page 136, to the effect that it would be desirable to remove all restrictions upon parties to industrial competition thus legalizing the strike, the lockout, the boycott, the black list, the bringing in of strike breakers and peaceful picketing.

The Federal Congress has acted on recommendations made in this report, accepting certain of these recommendations and rejecting others. See Statutes cited *Apex Hosiery* v. *Leader*, 84 Law Ed. at 921 (n. 14), 928 (n. 23-24.) Insofar as the situation in the *Duplex Press* case is concerned, can it be doubted that under similar situation today a federal court would not have jurisdiction to enter an injunction restraining the activities of the pressmen's union?

Consider the *Gompers* v. *Buck Stove Co.*, 221 U. S. 418. This case has been misunderstood, and has been the source of considerable error. First, the language from the opinion concerning boycott, etc., is purely, *dicta*. The case involved an appeal from a judgment of the Court of Appeals for the District of Columbia affirming a trial court order adjudging the defendants in contempt of court for violating a preliminary injunction granted by the trial court. The decision of the Court of Appeals on the merits in affirming the temporary injunction as modified is reported in 33 App. D. C. 83, with a vigorous and able dissenting opinion of Chief Justice Shepard, beginning at page 126. This ruling of affirmance on the merits was appealed to this Court, but the appeal was dismissed as moot in 219 U. S. 581. Accordingly, the dismissal of the appeal on the merits on the ground that the proceedings were moot in that the matter had been settled caused this Court to hold in 221 U. S. 418 that the contempt proceedings, being civil in their nature, were auxiliary to the civil proceedings on the merits, and since the civil proceedings on the merits had become moot it was unnecessary to render a decision on the civil contempt proceedings. Accordingly the cause was reversed and remanded with directions to the trial court to institute criminal contempt proceedings if it so saw fit.

(As a matter of history the trial court did proceed against *Gompers* for criminal contempt, and found him guilty of such criminal contempt. Such conviction for criminal contempt was reversed in 233 U. S. 604 in this Court, opinion by Mr. Justice Holmes, on the ground that the Statute of Limitations barred the contempt proceedings.)

The *dicta* of the majority of this Court must be measured against the dissenting opinion of Mr. Chief Jus-

tice Shepard of the Court of Appeals with regard to the power of a court of equity to restrain the publication of an "unfair list" on the ground that freedom of speech under the first amendment prevented a federal equity court from restraining publication (33 App. D. C., especially at page 129, and 132), and also his dissent on the same ground in the affirmance by the majority of the conviction for contempt (33 App. D. C. at p. 584).

The case of *Eastern States Retail Lumber Dealers Assoc.* v. *United States,* 234 U. S. 600, was a suit by the United States. The facts showed that the restraint could not be said to be within the rule of reason.

Loewe v. *Lawlor,* 235 U. S. 522, was a suit at law for damages for violation of the Anti-Trust laws.

In *American Steel Foundries* v. *Tri City Trades Council,* 257 U. S. 184, the jurisdiction of the trial court was based upon diversity of citizenship (at p. 189, 193 and 200). The trial court enjoined all picketing. The Circuit Court of Appeals for the Seventh Circuit, in an opinion by Justice Evans, permitted all picketing provided it was not done "in threatening or intimidating manner." This cause was argued three times before this Court, was on its docket for almost three years. During this time the Duplex Press case was decided. The decision in substance was to the effect that the Circuit Court of Appeals had erred in inserting the phrase "in threatening or intimidating manner" because such qualification was not clear or specific enough; second, the Court approved of the ruling of the Circuit Court of Appeals in striking out the word "persuasion" from the injunction granted by the trial court; third, it was held that on the facts of the particular case one picket for each entrance or exit would be permitted—that the Court wanted to avoid the unlawful conduct of physical violence or intimidation. The Court

stated that there was no general rule that could be applied to all cases except to avoid "inevitable intimidation of the presence of groups of pickets but to allow missionaries." It cannot be doubted that there was considerable violence (see 257 U. S. at 188).

But even this construction broadened Section 20 of the Clayton Act over the construction given by this Court in the *Duplex Press* case.

In *Scavenger Service Corp.* v. *Courtney,* 85 Fed. (2d) 825, the facts were that certain employers were using the union to prevent the plaintiff from entering into the scavenger business in Chicago. Plaintiff paid union scale, was willing to hire members of the defendant union, and was willing to have his men join the defendant union. In addition, jurisdiction was based upon diversity of citizenship.

Alleged Illegal Means.

The Master and the trial court held that the legal means, *i.e.,* peaceful picketing, were separable from the illegal means, *i.e.,* violence. The Circuit Court of Appeals did not expressly or impliedly hold that the violence was inseparable from the peaceful picketing. The Master's report indicates that upon the issue of fact whether violence insofar as committed by the members of the defendant union, the *only* findings he made in favor of the plaintiffs in this issue were that in several instances windows were smashed after pickets had been withdrawn and the Master concluded that either the union *or* its members had done this admittedly wrongful act.

The defendants neither here or in the court below sought to or now seek to condone the commission of acts of violence. Violence is ethically, legally and morally wrongful. Defendants denied and continue to deny that

the violence had been accomplished by the union or its officials or any of its authorized representatives. In substance the triers of fact so found. The Master and the District Court found that the violence that was committed by the "union or its members" could be separated from the peaceful picketing. Such a finding even according to plaintiffs' contention does not warrant the restraint of the legal means—peaceful picketing. Decisions to that effect are:

American Steel Foundries v. *Tri City Trades Council,* 257 U. S. 184.

Fenske Bros. v. *Upholsterers Union,* 358 Ill. 239 at 260.

Wise Shoe Co. v. *Lowenthal,* 266 N. Y. 264, 194 N. E. 749, at 750.

Iron Molders Union v. *Allis Chalmers Co.,* 166 Fed. 45, at 51.

Restatement of the Law of Torts, Sects. 815-816.

Baillis v. *Fuchs,* 283 N. Y. 133, 27 N. E. (2d) 812, at 814.

May's Furs v. *Bauer,* 282 N. Y. 331, 26 N. E. (2d) 279, at 284.

Warner Co. v. *Lilly Co.,* 265 U. S. 526, at 532.

Plaintiffs' attempts to distinguish cases we cited under the Norris-La Guardia Act are not sound.

In *Lauf* v. *Schinner Co.,* the evidence showed such unlawful acts as force and misleading signs, false accusations, molestations, threats, annoyance, intimidations, all of which prevented patrons from patronizing the employer's stores. Jurisdiction was there based upon diversity of citizenship.

In *Blankenship* v. *Kurfman,* the alleged jurisdictional grounds were the rights of the plaintiff union under the

National Labor Relations Board Act, and rights and duties affecting a free flow of interstate commerce. There, too, there were acts of violence and threats of violence (452).

In *Grace & Co.* v. *Williams,* alleged ground of jurisdiction was interference by defendants with free flow of interstate commerce. There were acts of violence, threats, assaults, etc.

The Congressional debates on the Norris-La Guardia Act indicate that "intimidation and coercion" were *rejected* as constituting a basis for the issuance of injunctions.

75 Cong. Rec. 4678 (Senator Wheeler).

In *Levering & Co.* v. *Morrin,* the history of the suit is significant. In the original suit the trial court's decree for an injunction was reversed by the Circuit Court of Appeals for the Second Circuit in 61 F. (2) 115. This ruling was affirmed by this Court in 289 U. S. 103 on the ground there was no jurisdiction under the Sherman Act where sympathetic strikes, boycotts, etc., by defendant union in New York City prevented the use of steel in New York City as a result of defendant's plan or conspiracy to compel the employment of union labor only; the "object" was an exclusive local aim. Therefore, it was outside the realm of the Anti-Trust law. Consequently, the defendants amended their complaint to rely on diversity of citizenship as basis of federal jurisdiction. This subsequent suit after the passage of the Norris-La Guardia Act in 1932. The Circuit Court of Appeals held there was a labor dispute within the meaning of the Norris-La-Guardia Act.

II.

Replying to Plaintiffs' II.

SHERMAN ACT NOT INTENDED TO PREVENT UNIONIZATION OF NON-UNION DAIRIES.

Plaintiffs' argument with regard to facts and findings as to interstate commerce and interference with sale of milk in Chicago as a violation of the Anti-Trust laws of the United States must be considered in the light of the recent decision in *Apex Hosiery Co.* v. *Leader,* 84 Law. Ed. 913, decided May 27, 1940.

We contend that: First, under the principle of *stare decisis,* the facts in the *Apex* case, as a matter of the *ratio decidendi,* compel a decision in favor of the defendant union in the case at bar. Second, that the reasoning in the court's opinion corroborates our analysis in our brief (pages 38-41). Third, that the language of the opinion supports our analysis and reasoning in the instant case. We also say, that even under the reasoning of the minority, in the opinion by Chief Justice Hughes, the result in our case should be the same as under the decision and reasoning of the majority of this Court.

First, the majority of this Court held that a plan to physically stop and prevent the shipment of manufactured goods from a factory into foreign states was not a violation of the Sherman Act where the union's purpose was to unionize the factory. Our case reflects the attempts of the union to unionize the plaintiffs' dairy as well as other non-union dairies. The purpose is purely local. The results upon interstate commerce are incidental to this local goal.

Second, the reasoning of the majority in the *Apex* case is that the Sherman Act prohibited only unreasonable restraints by labor unions; that Sections 6 and 20 of the Clayton Act insulated "reasonable" union activities from decapitation by the Sherman Act. In our case, unionization of the nonunion dairies was *not* unreasonable under the Sherman Act. Can it be denied that unionization is a proper union activity or a legitimate union goal? Can it be doubted that the presence of nonunion dairies, with their lower wage scale, their longer hours of labor, their failure to provide workmen's compensation benefits, seniority privileges, vacation rights and numerous other privileges demanded and obtained by its standard contract with union dairies, is a threat to the continued existence of union conditions? If the nonunion dairy is able to maintain these less desirable working conditions, it is only a matter of time before the unionized dairy will come to the union and demand the same privileges for itself.

Until recent years unions were struggling for existence as acceptable organizations in the social structure of our county. Their growth as organizations was purely a dynamic process. Unions, by their very nature must continue to grow or else die. If unions are static the dynamic economic environment will lead to certain obliteration. This was recognized by Mr. Chief Justice Taft in the *American Tri City* case in 257 U. S. at 209. This recognition was a reversal of the position that he took in the case of *Toledo A. A. & M. Rlwy.* v. *Pennsylvania Co.*, 54 F. 730, decided in 1894, where sitting as a district judge he held in substance that members of one railway belonging to a union were not justified in refusing to work upon "hot goods" originally carried by a nonunion railway carrier. This change in position was due to the fact

that Chief Justice Taft's economic and social beliefs had changed—and broadened—with the passage of time.

In the metropolitan City of Chicago, defendant union organized in 1902, has bettered the working conditions of its members, and has improved the status of the milk wagon driver generally throughout the milk industry. Even those individuals who work for the plaintiff dairy and employees similarly situated have profited by the struggles of the defendant union. To permit these individuals to assist in the destruction of the benefits gratuitously conferred upon them would be tragic irony.

The opinion in the *Apex* case is founded upon economic realities. It recognizes that working men may combine for the purpose of increasing their wage rate. It recognizes that the incidental effects of an increase in wages may sometimes be an increase in the price level or an injurious effect upon certain employers. But economic competition is a part of the democratic process. Care must be taken that neither side of combatants achieve disproportionate advantage as a result of judicial remedies created by virtue of personal economic convictions. Desire for equalization of economic competition led the Federal Congress to enact Sections 6 and 20 of the Clayton Act, the Norris-La Guardia Act, National Labor Relations Act, Railway Labor Act, and many other federal statutes.

Statutes restricting "government by injunction" by federal courts express definite public policy. Section 2 of the Norris-La Guardia Act in its statement of public policy approves of the action of associations of workers "in self-organization or in other concerted activities for the purpose of collective bargaining *or other mutual aid or protection.*" (Italics ours.) What is the "other mutual aid or protection" so designated by the Act? In

the case at bar the members of the labor union for mutual aid and protection were interested in unionizing the plaintiff dairy.

A recent decision that graphically illustrates economic and social realities from the point of view of conflicting theories is *Schwartz* v. *Laundry Drivers Union*, Penn. Supreme Court; ¶ 60,045; Commerce Clearing House Labor Law Service, decided June 28, 1940 at pp. 60,093-60,103.

The decision of the majority with regard to the validity of a provision that the laundries would not accept work from any "bob-tail" who is not a union member (p. 60,090) supports our contention. Even the analysis and reasoning of the dissenting judge, in our opinion, represents the fundamentally sound economic and social realities that led to the enactment of the Norris-La Guardia Act. These realities are inherent in the economic struggle in the case at bar. We respectfully refer to such dissenting opinion for its analysis and its citation of authorities.

Plaintiffs' statement that the record shows actual interference with delivery trucks which were "instrumentality of and were in interstate shipment" is in error because on conflicting evidence the Master *rejected* plaintiffs' version. The Circuit Court of Appeals did not refer to *such* interference as being undisputed, but was referring rather to picketing activities in and about the stores.

The rule of the minority in the *Apex* case defines a standard of permissible activity to labor unions to the effect that they have "* * * right to quit work, right peaceably to persuade others to quit work, the right to proceed by lawful measures within the contemplation of the Clayton Act to attain the legitimate objects of labor organizations." 84 Lawyers' Ed. at 941.

Is the unionization of a nonunion dairy a legitimate object of a labor organization? Is a closed-shop contract

for a nonunion dairy a legitimate object of labor organization? Is a closed-shop contract for the entire industry a legitimate object for a labor organization? The answer to all these questions is "yes." Even under the rule formulated by the Chief Justice, we submit there was no restraint of commerce constituting a violation of the Sherman Act.

Plaintiffs' argument ignores the public policy of the (Wagner) National Labor Relations Act. Section 8 (3) provides that nothing in that statute or in any other statute of the United States shall preclude an employer from signing a closed shop agreement. Did not Congress by this section intend to avoid any application by a Court of Anti-Trust Laws for the purpose of carrying out this goal? (July 5, 1935, c. 372, Sect. 8 (3); 48 Stat. 453; 29 U. S. C. A. Sect. 159 (3).)

To declare that the unionization of non-union dairies in the City of Chicago is a violation of the Anti-Trust Law is to disregard the provisions and the purpose of the Wagner Act.

Plaintiffs' argument at pp. 20-24, would result in the conclusion that even a strike by the machine operators in the plaintiffs' dairy would constitute a violation of the Anti-Trust laws. To answer, we rely upon the cases cited in our petition at pages 39 and 41, and on the decision in the *Apex* case, both the majority and the minority, as supporting our contention that the particular interference in the case at bar concerning the sale of milk in Chicago did not constitute a violation of the Sherman Act. Our case is even more removed from the effect upon interstate commerce than a strike in the processing or bottling factories. *A fortiori,* the decision should be that our case does not constitute a violation of the Sherman Anti-Trust Act.

Apex Case.

Under the majority opinion in the *Apex* case, we contend that the facts in the case at bar show that the picketing of the Chicago stores did not substantially restrict the interstate transportation of milk.

There is no direct evidence showing decrease of the flow of milk in interstate commerce as a result of the picketing of the stores.

Under the law, the plaintiff had the burden of affirmatively showing by the evidence that there was a substantial effect upon interstate commerce. The testimony of the officers of the Lake View Cooperative shows that there was no decrease in the amount of milk it shipped to the plaintiff dairy. Courts will not speculate in finding jurisdiction of the Federal District Court on the ground of interference with commerce.

The fact is that if the stores serviced by the plaintiff dairy did not sell the milk to the public in Chicago *other* stores did.

Second, under the majority opinion, the facts in the case at bar disclose that the union did not intend to prevent shipment of milk in interstate commerce.

In the *Apex* case both of the foregoing issues were decided against the union and in favor of the employer. The dissent held that these two issues of fact required application of the Sherman Act, *implying* that if these facts did not exist the Sherman Act would not, of course, apply.

The precise problem for determination in the case at bar is whether or not a plan (sometimes described as a conspiracy), of union members in the City of Chicago to unionize a nonunion dairy or to unionize all nonunion

dairies for the purpose of protecting the wage scale, hours of labor and other working conditions in the unionized dairies, and the carrying out of such plan by posting individuals carrying banners (usually described as pickets), in front of stores vending products of the nonunion dairy to the public, where the record does not show that this resulted in the preventing of substantial shipments interstate by the nonunion dairy, is a violation of the Anti-Trust law.

Considering the legislative history of the Sherman Act and the social and economic background of the statute, it is clear why the rule of reason formerly well recognized by this Court as governing the conduct of employer combinations is *now* applicable to labor unions; that in order for the Sherman Act to apply some form of restraint of commercial competition "restraints on competition or on the course of trade in the merchandising of articles moving in interstate commerce is not enough, unless the restraint is shown to have or is intended to have an effect upon prices in the market or otherwise to deprive purchasers or consumers of the advantages which they derive from free competition."

Was the restraint upon competition in the case at bar within the condemnation of the *Apex* case? The majority opinion recognizes that the inherent realities of the situation warrant careful analysis and determination of the result of the infringement of labor union activities upon market competition. The Court reasons:

First, combinations of employees necessarily restrain competition among themselves in the sale of their services.

Second, even though this combination raises the market price of labor there still is no violation of the Sherman Act. This economic reality was recognized at the time

of the adoption of the Sherman Act, because according to the common law at that time such a combination which raises the market price of labor was not either a restraint of trade, as the term was understood at common law, or else it was not an unreasonable restraint of trade. (Footnote 23 cites the authorities pointing out among other things that in America, courts have *progressively* recognized the *expanding* legitimate scope of labor combinations.)

Next, this Court gives regard to the immunities conferred by Sections 6 and 20 of the Clayton Act.

Fourth, assuming that, or recognizing the economic reality that combinations that raise the wages of labor may raise the market price of the product, does the raise in price due to labor union activity constitute a violation of the Sherman Act? The Court said:

> "* * * Successful union activity, as for example consummation of a wage agreement with employers, may have some influence on price competition by eliminating that part of such competition which is based on differences in labor standards. Since, in order to render a labor combination effective it must eliminate the competition from nonunion-made goods, see *American Steel Foundries* v. *Tri City Central Trades Council,* 257 U. S. 184, 209, an elimination of price competition based on differences in labor standards is the objective of any national labor organization. But this effect on competition has not been considered to be the kind of curtailment of price competition prohibited by the Sherman Act. (Citing cases.)"

This is judicial recognition of economic axioms. Legislative recognition of the legitimacy of unions and activities on behalf of their members is an empty shell unless it is followed by judicial acceptance of the "flesh and blood" materialization of the legislative standards. Law is not rhetorical emptiness.

If under the operations of economic laws, an increase

in wages is reflected in part by increase in price to the consumer, choice must be made between conflicting social desirabilities. This choice *has* been made by the Federal Congress. After years of experience, much of it bitter in its effect upon the working man, years of committee study, months of congressional debate, it has chosen to treat the increase in price as "reasonable."

Second, insofar as our *federal* government is concerned our society is sounder and happier under a high standard of living for the working man, notwithstanding the fact that the price to the consumer may be raised in proportion to the increase in wages. The sweat shop experience of workers was eliminated only by working men's cooperation through the garment workers' unions. Perhaps the consumer pays a few cents more for a dress or a suit, but our society is a better place in which to live as a result of the union growth and protection of its members.

Neither this brief nor this forum is the place for economic debate. The economics of the milk industry in Chicago are up to the present not capable of statistical presentation. But the *plaintiffs* ask for an injunction. The burden is upon *them* to show statistically that their contentions are socially sound. Next, the forum for such presentation is the legislature, not the courts.

The Federal Congress in 1914, in 1932, in 1935, in 1937 and in many other instances has recognized that the resolution of conflicting economic forces may best be had by full and complete presentation in legislative committee rather than appeal to a particular judge or to a group of several judges for determination. The Federal Congress has gone further for it has stated that the public policy is in favor of union protection of its membership by organization and concerted activity. The Federal Congress has recognized that competition between employers,

by virtue of price cutting, may be socially unsound insofar as it results in wage cutting. Fair Trade acts indicate that the legislatures approve of fixing the price to the consumer where the social and economic conditions warrant such action. See *Old Dearborn Co.* v. *Seagram Co.*, 299 U. S. 183, at 190.

Mr. Justice Brandeis in his dissent in the *Duplex* case, 254 U. S. 243, at 279, and in the *Bedford Cut Stone* case, 274 U. S. 37, at 56, recognized that because of the social policies favoring concerted and mutual action by laborers for the protection of their wage scale, that there is social justification for depriving consumers of the supposed benefits of curtailment of price competition. The original N. I. R. A. dramatically emphasized Federal legislative belief that unrestricted competition might result in social evils. The Federal Legislature was balancing the conflicting interests and claims of all groups of society. It found that the net advantage lay with the imposition of some restraint upon untrammeled competition. The decision of this Court in invalidating such legislation does not purport to contradict such social policy.

Consider the decision of *Tigner* v. *Texas*, 84 Law. Ed. 756, at 758, decided May 6, 1940, where this Court overruled the *Connelly* case. If economic realities conflict with legal abstractions, the latter must surrender.

In the *Apex* case, the Court discusses the meaning and application of Sections 6 and 20 of the Clayton Act. From the opinion of the Court it is not certain whether or not the Court intended to approve the decisions in the *Duplex Press*, the *Bedford Stone* and the *Danbury Hatters* case. Even assuming these earlier labor cases are still law, we contend that the particular facts in those cases are different from the facts in the case at bar:

1. There is no national organization.

2. Differences exist in the union's objectives in each of these cases.

3. Differences exist in the union means.

If these cases are not factually distinguishable we urge that in its decision in the case at bar this Court should make clear that the principles in the *Danbury Hatters, Duplex Press,* and *Bedford Stone* cases are squarely overruled. The dissenting opinions of Mr. Justice Brandeis in the *Duplex Press,* in the *Bedford Stone* cases, viewed in the light of his powerful dissent in *Truax* v. *Corrigan,* 257 U. S. 312, at 354, cogently formulate the principles of economics and the social philosophy that have been adopted by the Federal Government in the legislation discussed by this Court in its notes to the *Apex* case. The economic history of the United States in the last decade, especially when viewed in the emergencies of the present day, give the support of experience to the conclusions of Mr. Justice Brandeis.

In *Ritter* v. *Milk & Ice Cream Drivers' Union,* 136 Ohio St. 582, 27 N. E. (2d) 406, the Ohio Supreme Court refused to review the decision of an intermediate Court of Appeals. The economic dispute in the milk industry in Cleveland, Ohio, was substantially similar to the experience of Chicago in the case at bar. In Cleveland the union even entered into a contract with the milk dealers providing for a closed shop; providing, among other things, that only union members could deliver milk for such dealers. The plaintiffs, described as "independent milk brokers," sought an equity decree to "nullify" such contract on the ground that the contract was an unlawful conspiracy to eliminate the plaintiffs from competition. The injunctive relief was denied. (Digest of opinion is reported in C. C. H. Labor Law Service (2nd Ed.), ¶18,525.) (This cause is now pending before this Court on petition for certiorari, No. 354, Oct. Term, 1940.)

Immunization Under Clayton Act.

Plaintiffs' answer at page 25 cites cases for the general proposition that the Clayton Act may not be used as a cloak of immunity for illegal activities.

We have already pointed out that plaintiff is confusing the word illegal activities with the contention upon which we rely, namely, that the only kind of illegal activities involved in the case at bar is the question whether there is illegality as a result of violation of the Sherman Act.

All cases cited by plaintiff were decided prior to the passage of the Norris-La Guardia Act in 1932. Congress in passing the Norris-La Guardia Act intended to prevent courts from holding "as was the Clayton Act to make no change in the law." 75 Cong. Rec. 4630 (Senator Blaine.) It was to obviate such decisions that the Norris-La Guardia Act was placed on our statute books.

In the case at bar we do not contend that the Norris-La Guardia Act prevents injunctions against fraud or violence. Insofar as violence is concerned in the case at bar, the Master found against the plaintiffs on the issue of violence. Even assuming the facts on violence were in plaintiffs' favor, the conditions precedent to the Norris-La Guardia Act with regard to submission to arbitration, with regard to application to police officers for assistance, with regard to the conditions precedent to Section 7 of the Norris-La Guardia Act—all these plaintiff has failed to satisfy.

In *Jones & Laughlin* v. *Nat. Labor Relations Board,* 301 U. S. 1, at 33, this Court recognizes the necessity of workers to organize for the mutual protection. In *Va. Railway Co.* v. *System Federation,* 300 U. S. 515, the Railway Labor Act which was passed after the Norris-La Guardia Act was held to supersede it in the narrow field in the cases arising thereunder. In *Senn* v. *Tile*

Layers Union, 301 U. S. 468, this Court was discussing the constitutional validity of the Wisconsin "Norris-La Guardia Act."

In the cases cited by plaintiffs at page 27, to the effect that injunctions were granted, we pointed out in our petition at pages 36-37 that the injunctions did *not* restrain the acts specifically described in Section 4 of the Norris-La Guardia Act. See 75 Cong. Rec. 4773, 4774.

SHERMAN ACT DOES NOT ABOLISH DISTINCTION BETWEEN STATE AND FEDERAL POWER.

With regard to the first two groups of cases cited by plaintiff at pages 20-21, none of these cases discussed the question of so-called interference with milk or similar product after it has been bottled and has been started on its way either to the store or to the home. Contrast such decisions with *Highland Farms* v. *Agnew*, 300 U. S. 608; *Hood* v. *Commonwealth*, 235 Mass. 572; 127 N. E. 497, at 498, 499.

In the *Highland Farms* case this Court upheld the validity of the Virginia milk law. Plaintiff dairy had several stores in Virginia where he sold bottled milk that was purchased in its bottled form from a dairy across the border in the District of Columbia. The Virginia statute was attacked on the ground that it had unconstitutionally attempted to regulate and burden interstate commerce. The Court held that insofar as the statute applied to milk sold in Virginia within the designated market area, it did not affect interstate commerce, *i.e.*, that the sale of milk by a dairy in Virginia where the milk had been purchased in bottled form outside the state was not a sale in interstate commerce. See 300 U. S., at 615-616.

Surely the Sherman Act was not designed to abolish

the distinction between federal power and state power. The line must be drawn at some place. After the milk was bottled and on its way for delivery it can well be said that the interstate nature of the transaction had ceased, and that interference thereafter was local in its aim and in its activity to such a degree that Congress never intended to carry the Sherman Act to apply to such local activities.

See *Schecter Corp.* v. *United States,* 295 U. S. 495, at 543; *Carter* v. *Carter Coal Co.,* 298 U. S. 238, at 306-309.

In the *National Labor Relations Board* v. *Laughlin and Jones Steel Co.,* 301 U. S. 1, at 30, the Court stated that the distinction between national and local activities in commerce is vital to the maintenance of the federal system. Even admitting that we are not facing a problem of power but a problem of statutory construction, the vital distinction between federal and state power must not be disregarded.

The Congressional debates on the Norris-La Guardia Act indicated that it was recognized and accepted that successful peaceful strikes would interfere with interstate commerce.

75 Cong. Rec. 4693 (Senator Walsh).

The facts in our case fall within the language of this Court in the second *Coronado* case, 268 U. S. 295, where at page 310 the Court states that the mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily a remote and indirect obstruction to that commerce. See the discussion by this Court in the *Apex* case opinion of the decisions in the first *Coronado* case, namely, *United Mine Workers* v. *Coronado Coal Co.,* 259 U. S. 344, at 412, 407, 408; *United Leather Workers* v. *Herkert Co.,* 265 U. S. 457 (adopting

the dissenting opinion of Judge Stone, warning against making of strikes subject to the federal power under the Sherman Act, 284 F. 464, 465) and *Levering Co.* v. *Morrin,* 289 U. S. 103, at 107; and *Industrial Assn.* v. *United States,* 268 U. S. 64.

Additional opinions of the lower courts that confirm this analysis:

Blankinship v. *Kurfman,* 96 F. (2) 450, at 455, 466 (C. C. A. 7).

Danville Local Union v. *Danville Brick Co.,* 283 F. 909, at 910 (C. C. A. 7).

Gable v. *Vonnegnt Machine Co.,* 274 F. 66 (C. C. A. 6).

Foss v. *Portland Terminal,* 287 F. 283 (C. C. A. 1).

Great Northern Railway v. *Local Union, Great Falls,* 283 F. 557, (D. C. Montana).

United Mine Workers v. *Pa. Co.,* 300 F. 965 (C. C. A. 8).

Abouf v. *Spreckles Co.,* 26 F. Sup. 830 (D. C. Cal.).

Arthur & Son v. *Kraft Cheese Co.,* 26 F. Sup. 824 (Dist. Ct. Md.).

The order of the Secretary of Agriculture concerns the price of milk to be paid to the producers. It does not purport to deal with milk after it is bottled.

The decision of this Court in *United States* v. *Borden Co., et al.,* does not purport to pass upon the contentions we advance in the case at bar.

All of the cases cited by the plaintiff on pages 22 to 24 must be considered in light of our analysis of the decision of this Court in the *Apex Hosiery* case. With regard to labor unions, the fact is that the union in its attempt to achieve legitimate union objects is brought into conflict or in opposition to the employers' conduct

of his business. This is inevitable. The opposition may consist of various kinds. Federal cases supporting the right of the union to "oppose" the employer are as follows:

Rambusch v. *Brotherhood of Painters,* 105 Fed. (2d) 134 (cert. denied by Supreme Ct.).

Barker Painting Co. v. *Brotherhood of Painters,* 23 Fed. (2d) 743, 745.

The decisions of state courts illustrating the right of the union to oppose such working conditions as are detrimental to the rights of the union members and union employees are as follows:

Kemp v. *Division,* 255 Ill. 213.

Lichterman v. *Laundry Drivers Union,* 204 Minn. 75, 282 N. W. 689, at 690.

Sheehan v. *Levy,* 238 S. W. 900.

Weber v. *Musician's Union,* 17 N. Y. S. (2d) 144. (Note in 53 Harv. L. Rev. 1054).

Schwartz v. *Laundry Drivers Union,* C. C. H. Labor Law, ¶60,045.

Landis "Cases on Labor Law," page 357, note.

Unionization of An Industry Is Not a Monopoly Within Meaning of Section 3 of the Sherman Act.

To unionize all milk wagon drivers is not to control trade or commerce within the meaning of the Sherman Anti-Trust Act. Labor is not a commodity. Unionization of all laborers, *i.e.,* the grouping together of all of the services offered by working men is not restraint of any commodity. The unionization of all the workers in the entire coal industry would not constitute a monopoly of trade or commerce within the meaning of Section 3 of the Sherman Act. The decision of the Circuit Court of Appeals to the effect that unionization of all milk wagon drivers in Chicago would constitute a violation of the

monopoly provisions of the Sherman Act is the *first* decision by a federal court to that effect since the decision by the trial court in the case of *Hitchman Coal Co.* v. *Mitchell,* 202 F. 512, at 554. The Circuit Court of Appeals reversed this holding placing its decision on another ground, and this Court affirming the Circuit Court of Appeals in 245 U. S. 229, 253, did not refer to the holding of the trial court as the basis of its decision.

The decision of the C. C. A. is contrary to the language of this Court in *American Foundries* v. *Tri City Council,* 257 U. S. 184 at 209. It is contrary to its earlier decision in *Gasaway* v. *Borderland Coal Co.,* 278 F. 56, at 65; discussed in 35 Harvard Law Rev. at 459. It is contrary to *Nat'l Assoc. of Mnfgrs.* v. *U. S.,* 263 U. S. 403.

The substantive law of Illinois recognizes the validity of the closed shop in "one industry."

Kemp v. *Division,* 241, 255 Ill. 213, at 225 (adopting the dissenting opinion of Justice Julian Mack, reported in 153 Ill. App. at 637, 656).

Carpenters Union v. *Citizens Committee,* 244 Ill. App. 540, at 555, 616, 617 (Reversed in 333 Ill. 225).

People v. *Seefeldt,* 310 Ill. 441, at 445.

Christenson v. *Kellog Switchboard,* 110 Ill. App. 71.

The Federal Government could not enforce one kind of Anti-Trust law in one place and another kind elsewhere.

The Federal Government has stated the Federal policy in Norris-La Guardia and Clayton Acts.

The alternative to following a unified Federal policy is to accept diverse local views as to what constitutes unreasonableness in violation of the Sherman Act.

So a Federal Court sitting in New Jersey would be required to hold that a strike to unionize the entire oyster

industry is a restraint of trade in violation of the Sherman Act, and could be indicted, or under its argument the Norris-La Guardia Act would not apply. Whereas a New York Federal Court passing on the same set of facts would hold no violation of the Sherman Act and no jurisdiction to grant injunction by virtue of application of the Norris-La Guardia Act. cf. the decisions of courts holding that non-labor restraints or monopolies are *not* violations of the Sherman Act. *Millinery Creators Guild* v. *Fed. Trade Comm.*, 109 Fed. (2d) 175 (pending on certiorari application docket No. 251, Oct. Term, 1940); *McCann* v. *N. Y. Stock Exchange,* 107 Fed. (2d), 908, as discussed in 40 Colum. L. Rev. 736 (April, 1940).

We take issue with plaintiffs' statement at page 23 that the entire controversy is over the attempts of the defendants to prevent the sale of cut-rate milk. This statement is a repetition of the now familiar error so frequently found in labor cases, of misunderstanding union purposes and confusing economic results with union goals. As the facts indicate, practically all union dairies sell cut-rate milk, at least to some degree; also even nonunion dairies, such as the plaintiff, sell *some* milk at the same price as union dairies. The controversy is between the union and the nonunion working conditions. The *reason* for the controversy is the difference in wage scale, hours of labor, and other working conditions between the union and nonunion dairies. Even if, as a matter of economics, a price differential exists between nonunion and union dairies as a result of the difference in the wage scale, the union is nevertheless justified in attempting to protect its union scale. Sweat-shop conditions in the clothing industry might cause a reduction in price. Would the Garment Workers Union be prohibited by the Sherman Act from attempting to unionize such industry simply because the elimination of sweat shops would result

in price increase? According to plaintiffs' argument such conduct would be a violation of the Anti-Trust law.

SECONDARY BOYCOTT IS NOT VIOLATION OF SHERMAN ACT.

At pages 23-24, plaintiffs apparently assume that a secondary boycott constitutes a violation of the Sherman Act.

This contention is irrelevant because the decision of this Court in the *Apex* case is that the so-called illegality of "means" used is irrelevant in determining whether or not there has been a restraint of trade within the meaning of the Sherman Act.

One of the questions involved in this cause, and more especially in the cause now pending in this docket entitled *Milk Wagon Drivers Union* v. *Meadowmoor Dairy,* No. 1, Oct. Term, 1940, is whether or not a state court by judicial decision may validly prevent the exercise of constitutional rights to peaceful picketing by designating such conduct as a "secondary boycott." This will be discussed further in our brief.

In our petition, pages 37-38, we urge that under the Norris-La Guardia Act the specific discretions of Section 4 rendered a federal court powerless to issue an injunction against activity, regardless of whether it was a primary or secondary boycott. Where there is a "labor dispute" within the meaning of the Norris-La Guardia Act there is no "unreasonable" restraint of trade by the union within the meaning of the Sherman Act.

cf. 40 Colum. L. Rev. at 29, 51.

U. S. v. *Hutcheson,* C. C. H. Labor Law Service (2d ed.), ¶18,601. Pending on appeal, No. 43, Oct. Term, 1940.

EXISTENCE OF LABOR DISPUTE WITHIN MEANING OF NORRIS-LA GUARDIA ACT.

In our petition, pp. 25-38, we cited and discussed decisions of this Court that reflected the purpose of the Norris-La Guardia Act and the application of its provisions. As a matter of precedent they require a reversal of the decision by the Circuit Court of Appeals. That decision is exactly the kind of rulings that Congress wanted to avoid. The committee reports, cited in the New Negro Alliance decision indicate a definite intent to avoid the use of federal court injunctions to solve the intricate problems of economic competition between employees and employers.

The decision of the Circuit Court of Appeals, if sustained, will encourage the lower Federal courts to engage in the legal thaumaturgy which in 1922 accounted for approximately 300 injunctions in "Railroad strike cases". We respectfully urge that the Congressional debates on the Norris-La Guardia Act justify defendants in urging this court to realize the consequences of putting the Federal courts back in the "business of governing by injunction."

75 Cong. Rec. 4618-4626 (Senator Blaine).
75 Cong. Rec. 4502 *et seq.* (Senator Norris).
75 Cong. Rec. 4914-4920 (Senator Wagner).

Milk Wagon Drivers in the City of Chicago owe their improvement in working conditions to their organization into a union and ensuing concerted activity. Non-union dairies are in economic competition with the members of the union. The economic interests of both groups are substantial but under the Norris-La Guardia Act the Federal courts are precluded from determining the issues in favor of the non-union dairies by means of an injunction.

Non-union employers seeking a Federal public policy differing from the presently existing one must go to the Federal Congress.

III.

Replying to Plaintiffs' III.

FREEDOM OF SPEECH.

Plaintiffs' answer under this heading in substance relies upon the general formula that a court of equity can enjoin "freedom of speech" when the *purpose* of the speech is illegal.

This vague formula is rhetorically simple, but is socially dangerous. If applied logically every legislature and every court might avoid the constitutional restraint by the creation of an "illegal purpose" for the speech.

Our case presents the problem whether a *federal* equity court has the power to restrain publicity. The federal statutes creating federal equity courts should not be so construed as to indirectly avoid constitutional prohibitions which could not be directly avoided.

Again, the problem does not necessarily involve the question whether or not a purpose is tortious, for it is entirely possible that the purpose may be tortious and therefore *subsequently* punishable by either criminal proceedings for violation of legislative prohibition or by civil actions for damages for wrong, *i. e.,* tortious conduct, and still not determine the question whether an equity court can by injunction restrain *future activity.* An injunction is a *previous* restraint upon freedom of speech—to be contrasted with a subsequent suit either at criminal law or at law for damages. The cases of this Court and the text writers clearly recognize this broad distinction.

It is to be noted that in the case of *Aikens* v. *Wisconsin,* this Court said that the *plot* was to be punished by

law—not the separately innocent constitutionally protected act. Again, the Court was discussing punishment by criminal law.

Congress wanted to avoid the use of Justice Holmes' formula as a basis for the issuance of an injunction to restrain the acts specified by Sect. 4 of the Morris-La Guardia Act, 75 Cong. Rec. 4772 (Senator Herbert).

The *Gompers* case has been previously discussed.

Near v. *Minnesota,* 283 U. S. 697, supports our differentiation between previous restraint by injunction and subsequent punishment either by criminal law or civil action for damages.

Duplex Press case has already been discussed.

In reply to the remaining argument of plaintiffs, we adopt the provisions of our petition, pages 46-50, and in addition cite the following authorities which analyze and discuss the problem of freedom of speech:

1. Earlier Illinois "labor controversy" cases concerning the substantive law of Illinois:

Vulcan Detinning Co. v. *St. Clair,* 315 Ill. 40, at 46-47.

Schuster v. *International Assn. of Machinists,* 293 Ill. App. 177, at 193.

Lietzman v. *Broadcasting Station W. C. F. L.,* 282 Ill. App. 214, at 218.

Beaton v. *Tarrant,* 102 Ill. App. 124, at 129.

"Labor controversy" cases of other state courts that corroborate our analysis and conclusion as to the rights of freedom of speech are as follows:

Ex parte Lyons, 94 Cal. App. 70; 81 Pac. (2nd) 190, at 192, 193.

People v. *Harris,* 104 Colo. 386; 91 Pac. 2nd) 989, at 993.

Kraemer v. *American Federation of Hosiery Workers,* 305 Pa. 206; 157 Atl. 588, at 590, 602.

People v. *Armentrout*, 118 Cal. App. 761; 1 Pac. (2nd) 556, at 560 (dissenting opinion of Yankewich, J.).

Crosby v. *Rath*, 136 Ohio St. 352; 25 N. E. (2nd) (the dissenting opinion of Zimmerman, J., at p. 935; pending on application for certiorari, Oct. Term 1940, No. 187).

Denver Truck Lines v. *Perry*, 101 Pac. (2nd) 436, at 444 (Colo.).

Reno v. *Second Judicial Dist.*, 95 Pac. (2nd) 994, 998 (Nev.).

The principle of freedom of speech involved is most clearly presented by those cases involving disputes between groups of individuals *other* than employer-employee groups. In those cases it is held that the dispute may be publicized by a banner or placard displayed to the public as an exercise of the parties' constitutional rights to freedom of speech under the federal constitution and the amendments thereto.

Julie Baking Co. v. *Graymond*, 152 Misc. 946; 247 N. Y. S. 250, at 251-252 (1934).

Rosman v. *United Kosher Butchers*, 163 Misc. 331; 298 N. Y. S. 343-344 (1937).

Bernstein v. *Retail Cleaners*, 31 Ohio M. P. (N. S.) 433, at 436 (1934).

Individual Store Owners v. *Penn Treaty Stores*, 33 Pa. D. & C. 100, at 101 (1938).

There is a respectable body of authority holding that a court of equity is precluded by the constitutional guarantee of freedom of speech against granting injunctive relief against publications or utterances in furtherance of a strike or boycott.

Truax v. *Bisbee Local*, 19 Ariz. 379; 171 Pac. 121 (1918).

Marx & H. Jeans Clothing Co. v. *Watson*, 168 Mo. 133; 56 L. R. A. 951; 90 Am. St. Rep. 440; 67 S. W. 391 (1902).

Re Heffron, 179 Mo. App. 639; 162 S. W. 652 (1914).

Lindsay & Co. v. *Montana Federation of Labor*, 37 Mont. 264; 18 L. R. A. (N. S.) 707; 127 Am. St. Rep. 722; 96 Pac. 127 (1908).

Richter Bros. v. *Journeymen Tailors' Union*, 24 Ohio L. J. 189; 11 Ohio Dec. Reprint 45.

Riggs v. *Cincinnati Waiters' Alliance*, 5 Ohio N. P. 386; 8 Ohio S. & C. P. Dec. 565 (1895).

Ex parte Tucker, 110 Tex. 335; 220 S. W. 75 (1920).

Defendants do not contend that the right to freedom of speech includes the right to commit acts of violence. We do contend that plaintiffs who seek an injunction against freedom of speech cannot defeat the constitutional rights to such freedom of speech by pointing to the existence of violence because the court of equity separates the lawful acts from the unlawful acts. (See cases *supra* at p. 19.)

The rules adopted by the American Law Institute in the "Restatement of the Law as to Torts" and the comments in support of such rules adopt the point of view of these authorities and reject the decisions to the contrary.

See Sec. 779 and comments, especially at pages 109-110, and Sec. 79 and comments at pages 143 to 148, inclusive.

The recent decisions of this court in the *Thornhill* and the *Carlson* cases make it clear that any ordinance or statute so worded as to make it criminal for a labor union to picket in the case at bar would be invalid under the free speech guarantees under the federal constitution. The analysis and reasoning of this Court, although stated with regard to legislative enactment, apply with equal force to the injunction decree granted by a court of equity in a particular proceeding.

See the discussion of these cases in 8 Interna-

tional Juridical Assn., pages 113, 120-124 (May 1940) and the numerous authorities cited in the notes.

The essence of these decisions is that our federal constitution guarantees the right of free men to learn facts in the market place, to discuss them with other free men, and to come to their own conclusions. *This* is the essence of freedom of speech. This is the essence of the traditional publicity mechanism of trade unions, namely, peaceful picketing. To permit an equity court to restrain the carrying of banners is to necessarily permit the equity court to restrain the distribution of handbills or the printing of or advertising in newspapers. Neither social nor industrial democracy can exist where expression of thought and discussion between individuals is stifled by injunction. Our American social philosophy exudes the premise of appeal to reason by free men.

cf. *Cantwell* v. *Conn.*, 84 Law Ed. 836, at 842, 843.

What arguments can the employer give to support any contention that the public should be "prevented" from knowing the opinion and statement of the defendant union and its members?

The storekeepers in the case at bar employed *their* method of publicity in advising the public *their* version of the controversy by inserting the C. I. O. union cards in their windows. Defendants do not deny that they have this privilege. The defendants simply ask for the privilege of carrying the banner outside the store advising the public of their version.

The injunction ordered by the Circuit Court of Appeals attempts to preserve certain economic conditions. But this Court recently stated:

"Equally obvious is it that a state may not unduly suppress free communication of views, religious or

otherwise, under the guise of conserving desirable conditions."

Cantwell v. *Connecticut*, 84 Law Ed. at 842.

Plaintiffs seek an injunction for the purpose of permanently perpetuating an advantageous economic condition. (*Senn* v. *Tile Layers' Union*, 301 U. S. 468, at 480-482.)

cf. Pepper, 75 Cong. Rec. 4694.

Defendants seek to have an opportunity to present their version of the economic scene to the public—so that the public by making *its* choice will govern the result.

Secondary Boycott v. Freedom of Speech.

To rely upon the phrase "secondary boycott" is to avoid a clear-cut analysis of the issues. If carrying a banner and appealing to the public is in fact the giving of publicity, then the phrase "secondary boycott" loses its magic efficacy as a formula for arbitrarily determining enjoinability or nonenjoinability. If, as the fact is, the determination whether to purchase union or non-union milk rests with the public by its choice after being advised by either one or both sides of the parties to the dispute, then the use of the phrase secondary boycott is misleading.

Courts, in declaring a secondary boycott to be illegal, assumed that coercion existed in fact; that such coercion was socially undesirable, and therefore tortious according to law. Carrying a banner is not coercive. The housewife or any other person seeking to do business with a storekeeper has the power and privilege of choice. The storekeeper has no constitutional guarantee to either retaining his previous customers or obtaining his new customers any more than the union has the constitutional guarantee of preventing the storekeeper from gaining new

customers or retaining old customers. Both sides have the constitutional privilege of appealing to the public for its support. The decision of the public should not be compelled either one way or the other by an injunction dictated upon a formula created for the purpose of preserving specified economic and social views. The competition of the market place suffices to test the publication choice. It is time that the phrase "secondary boycott" be dropped and recognition be given to the privilege of both groups, employer and employee, to appeal to the public and ask the latter to determine the correctness or wisdom of the conflicting points of view.

Denver Local Union of Teamsters v. *Perry Truck Lines,* 101 Pac. (2d) 436 (Colo.) at p. 444 and cases there cited.

"Labor and the Secondary Boycott", 15 U. of Wash. L. R. 137 (July, 1940) and various articles cited in Note 3, p. 137.

Goldfinger v. *Feintuch,* 276 N. Y. 281; 11 N. E. (2d) 810.

Iron Molders Union v. *Chalmers,* 166 Fed. 45.

Kroger Grocers v. *Ketail Clerks Union,* 254 Fed. 890, at 897.

United Chain v. *Philadelphia Union,* 50 Fed. (2d) 189, at 191.

CONCLUSION.

Unionization of non-union dairies in Chicago is not a violation of the Anti-Trust Laws. The Morris-La Guardia Act precluded the Federal Court from issuing an injunction to prevent the defendant union and its members from carrying out its legitimate purpose. The carrying of banners is an exercise by members of defendant union of their rights to free speech under the 14th Amendment to the Federal Constitution.

Petitioners respectfully submit that the judgment of the Circuit Court of Appeals for the 7th Circuit should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 20

MILK WAGON DRIVER'S UNION, LOCAL 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, A VOLUNTARY ASSOCIATION; ROBERT G. FITCHIE, JAMES KENNEDY, STEVE SUMNER, FRED C. DAHMS, F. RAY BRYANT, ALVIN F. RICHARDS, AND JOSEPH L. PATTERSON,

Petitioners,

vs.

LAKE VALLEY FARM PRODUCTS, INC., A CORPORATION; AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION NO. 819, A VOLUNTARY UNINCORPORATED ASSOCIATION; LAKE VIEW CO-OPERATIVE OF WATERTOWN, WISCONSIN, AN AGRICULTURAL COOPERATIVE CORPORATION OF THE STATE OF WISCONSIN,

Respondents.

REPLY BRIEF OF PETITIONERS.

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THE GUILTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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Respondents.

REPLY BRIEF OF PETITIONERS.

To the Honorable Charles Evans Hughes, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

In this reply brief, defendants (petitioners) follow the outline of plaintiffs' (respondents') brief.

Most of the arguments advanced in plaintiffs' brief have been already answered in defendants' original petition for

certiorari and their subsequent brief in support thereof. However we briefly refer to two aspects of plaintiffs' brief:

First, to the arguments scattered throughout plaintiffs' brief that they are entitled to an injunction on the alleged economic premise that their method of milk delivery is more progressive and more efficient than that used by the union dairies in Chicago.

In answer we say, (1) the premise is unsound; (2) the plaintiffs' deductions from such unsound premise are fallacious.

Second, to the arguments in plaintiffs' brief based upon alleged facts in the record.

The authorities recognize that the drama of an industrial conflict is not fully disclosed by the black and white of a printed record. Economic and social forces, facts and impulses vie with the complicated psychological factors in bringing the entire scene of an industrial conflict before a Court. Our "economic" summary at pp. 2-4 of our petition is an attempt to bring before this Court the conditions in the milk industry in the City of Chicago, Illinois. This economic picture is not only shown by the dispute in the case at bar but is emphasized by the records in other cases involving the Chicago milk industry cited at p. 7 of our brief. Plaintiffs do *not* discuss these broad economic features but instead attempt to limit themselves to a *portion* of the record in the case at bar, namely to the 9th finding of the District Court (R. 249). Under this finding plaintiffs apparently broaden the controversy to so-called cut-rate dairies on the one hand and union dairies on the other.

Also, plaintiffs' statement of fact concerning the "broadened controversy" (pp. 2-5) ignores the Record in the following aspects:

(1) It ignores the fact that so-called Chicago cut-rate

dairies engage the services of vendors for delivery of their milk to the household, *i. e.,* retail delivery as well as delivery to the stores (R. 77, 90, 92, 93, 94, 105, 120). Some of the cut-rate dairies *employ* drivers who are paid less than the union scale (R. 77, 87).

(2) It ignores the fact that practically all union dairies sell milk at the so-called cut-rate price (R. 282, 317, 318, 344). It ignores the fact that the so-called cut-rate dairies' prices to the public vary from store to store (R. 71), and that there is no uniform price for cut-rate milk.

(3) It ignores the fact that union dairies deliver milk to stores too, *i. e.,* have wholesale routes (R. 60, 61, 63, 68, etc.).

(4) It ignores the fact that the vendors employ helpers whose wages are much lower than those of the union scale (R. 68, 73, 82, 90).

(5) It ignores the fact that the union has referred to the plaintiff dairy as non-union. (See Exhibit set out in plaintiff's complaint (R. 41).)

(6) It ignores the fact recognized by the Circuit Court of Appeals that the defendant union attempted to unionize vendors (R. 368).

(7) It ignores the evidence concerning the "problematical" plaintiff labor union as described by the Master (R. 220, No. 38).

(8) It ignores the fact that the general finding of the District Court on the equities in favor of the defendants and against the plaintiffs at R. 250-251 settled all controverted issues of fact in favor of the defendants and against plaintiffs.

(9) It ignores the fact that the findings of violence with the exception of the finding of violence connected

with breaking of windows described as being committed by the "union or its members" were against the plaintiffs and in favor of the defendants (R. 222).

I.

A.

Illegal Purpose of Union Activity Under the Sherman Act.

Under I, the plaintiffs accept our contention that the only kind of illegality that should be considered in the case at bar is the question of illegality under the Sherman Act. In substance, plaintiffs contend that under the case of *Apex Hosiery* v. *Leader*, the purposes of the defendant union were illegal *per se* under the Sherman Act in that they attempted to control price, attempted to suppress competition in marketing methods, and attempted to prevent persons from engaging in business enterprise except upon the terms dictated by defendants (Pages 10-23 of plaintiffs' brief are devoted to this general contention).

Plaintiffs now admit that the efforts of a union to organize an entire industry or efforts to increase wages or benefit workers which in turn "incidentally" raise the price to the consumer is not a violation of the Sherman Act (Pages 11, 12, 16).

But even the Circuit Court of Appeals squarely found that the *purpose of* the union was to organize the entire milk industry in Chicago (R. 367). *This is not price fixing* nor can it be construed as any of the evils prohibited by the Sherman Act. It is true that the Court at the same time said that this unionization of the entire industry was to be achieved by the elimination of cut-rate distributors from the City of Chicago. Plaintiffs' brief ignores the first part of the foregoing statement—but limits itself to the second part of this statement by the Circuit Court of Appeals.

Plaintiffs' argument that this effect of eliminating cut-rate producers is based substantially on the ninth finding by the District Court. From that *single* finding plaintiffs at various places in their Argument make the following contentions:

1. That all the other findings of fact made by the Master in favor of the defendants were properly disregarded by the Circuit Court of Appeals, and should also be disregarded by this Court.

2. The record should be treated as if the plaintiffs' system of distribution of milk was so much more progressive, economical and efficient than the system of the unionized dairies that it should follow as a matter of law that the plaintiffs are entitled to an injunction restraining any attempts of the union to preserve union scale working conditions, and to preserve jobs for union employees.

3. That the conduct of the defendant union in seeking to unionize non-union dairies would necessarily result in a change from the vendor system of milk delivery to stores, to the employee system of milk delivery to houses.

4. That it necessarily follows from this finding that any attempt by a union to unionize an industry where the effect of such unionization is to cause a change in the "employers' business" is necessarily such a restraint of trade as to constitute a violation of the Sherman Anti-trust Act.

5. That it necessarily follows from this finding that any attempt by a union regardless of its purpose which results in increase of price to the consumer due to the fact that a less efficient economic machine is created is necessarily a violation of the Sherman Act.

6. That under the *Apex* case, the problem before Federal District Courts on suits under the Sherman Anti-

trust Act is to determine whether or not the union purpose or goal is "sounder" from the judges' economic point of view than the purpose or goal of the employer.

7. That there can be no labor dispute within the meaning of the Norris-LaGuardia Act if the employers' economic thesis is accepted by the trial court and that of the union is rejected.

8. That there can be no picketing of any kind in a controversy between an employer and employee if interstate commerce is involved and if the employers' economic arguments are more persuasive than that advanced by the employees or union on their behalf.

The aforegoing represent *some* of the contentions made by the plaintiffs. But no argument is needed to show the errors in logic involved in such contentions.

We contend that:

(1) To accept this analysis and technique would be to reinstate the *Duplex Press* case decision even though it would be couched in the terms of the Holmes-Brandeis formula.

(2) To accept this analysis and technique would mean that every union dairy in Chicago could immediately discharge every one of its union employees and install the vendor system delivering solely to stores, and leave the union helpless, in that any attempt to reinstate the employee system of employees paid the union scale would be met by a suit in the Federal Court asking for an injunction under the Sherman Act.

(3) To accept this analysis and technique would mean the end of the closed shop in any single factory the products of which would be shipped in interstate commerce.

The union and its members are not opposing the vendor system in the abstract. The union seeks to protect its

hard earned gain against the *evils* of the vendor system; because

(1) its working conditions being so much inferior to union working conditions is an immediate threat to the preservation of *union conditions* in union dairies;

(2) its inferior working conditions is an immediate threat to the existence of *jobs* in union dairies by depriving union dairies of their business;

(3) and even if we assume that the working conditions were not inferior, and even if we assume that vendor and helper system are economically superior then the jobs of union employees are endangered.

Would the union be prevented from calling a strike in union dairies? According to plaintiff's argument such a strike would be prohibited by the decision in the Apex case. This is clearly *not* the law.

But here, too, the plaintiffs are making the same mistake as the Circuit Court of Appeals did in failing to recognize economic realities. The true economic facts are that the defendant union is trying to organize, *i. e.*, unionize, all distributors of milk in the City of Chicago. Plaintiffs now admit that *this* is not a violation of the Sherman Act. It does not follow that the unionization of all distributors of milk in the City of Chicago would necessarily eliminate cut-rate milk for the facts in the record show that union dairies sell cut-rate milk. As another step in economic logic, it can squarely be asserted that the dynamic appeal of economic competition among dairies, both in and outside the City of Chicago, will act as a constant spur to insure the maintenance of prices at a reasonable competitive level.

In addition, let us assume for the sake of argument that the unionization of all distributors would lead to the elimination of cut-rate milk. The elimination of sweat shop conditions in the clothing trades has tended to eliminate producers who merchanted their wares with-

out any regard for the share that labor was to receive in return for its use in the process of production.

In the early days in the coal industry, the marginal mine owner who produced his coal by employing underpaid help may have been able to sell his product to the public at a price lower than that paid for a product produced under "union" conditions. Would the attempt to unionize the mine be a violation of the Sherman Act since it tended to "fix" the terms and conditions of doing business?

Where would plaintiffs draw the line between those increases in price which are incidental (and therefore accordingly the union activity which would result in such price increase is not a violation of the Sherman Act) and union activity which would result in price increase which would be a violation of the Sherman Act?

This Court in the *Apex* case recognized the fundamental distinction between two situations: first, individuals getting together and fixing an arbitrary price of a product; second, the union which seeks to protect and better the working conditions of its members by seeking the unionization of an industry or an increase in wages. Insofar as the union seeks to unionize an entire industry, it is *not* controlling the price within the condemnation of the Sherman Act. It is not "dictating terms and conditions" within the language in the *Apex* case.

With regard to the general analysis and technique advanced by the plaintiffs, the closed shop in a single dairy in a sense tends to suppress competition, *i. e.*, it eliminates the open shop. The closed shop in a single dairy in a certain sense tends to prevent persons from engaging in business enterprises except upon terms "dictated" by the union. Does the Sherman Act condemn this union activity? Sections 6 and 20 of the Clayton Act

were passed in 1914 for the purpose of preventing the Sherman Act from being stretched to become an oppression of labor. The Norris-LaGuardia Act was passed in 1932 to make it clear to the Federal Courts that the purposes of Sections 6 and 20 of the Clayton Act should be carried out. To accept plaintiffs' argument is to disregard all these immunizing statutes. It is even in disregard of the purpose of Sherman Act as disclosed in the legislative history of the statute so clearly shown by this Court in the case of *Apex Hosiery* v. *Leader*.

Plaintiffs' exceptions to the Master's Report (R. 223-238) and their request for findings of fact and conclusions of law (R. 239-243) indicate that the facts with regard to price control, etc., were squarely presented to the Master and to the District Court, and that the tryers of fact rejected plaintiffs' contention. The record is bare of any evidence directly tending to show that the union was interested in price control. The facts clearly disclose that the union was interested in obtaining union scale for vendors and their *helpers,* not only of the plaintiff, Lake Valley Dairy, but also of the other non-union dairies in Chicago. That was the union purpose.

Plaintiffs' arguments with regard to contending that defendant union's attempts to unionize inevitably amount to price control, suppression of competition, dictation of terms, etc., is the new technique whereby under the language in the case of *Apex Hosiery* v. *Leader* employers will seek to escape unionization. Employers will now seek in every case to contend that the union is not interested in unionization of the industry, but is interested in something injurious to the consumer. The argument of injury to consumer is not a new argument so far as employers are concerned. Proponents of open shops have always contended that they are protecting the interests of the

consumer in having the open shop because under the closed shop the union dictates terms, conditions, etc.

But the true economic and common sense fact that human experience teaches us is that the employer is interested in profits for himself. This is natural. This is healthy. On the other hand experience also teaches us that the union is also interested in obtaining a fairer share of profits for the laborer. This too should be recognized as natural and as healthy.

To give the Sherman Act the interpretation contended for by the plaintiffs would be flying in the face of the provisions of Sections 6 and 20 of the Clayton Act. It would be in disregard of the purposes of the Sherman Act as shown by its legislative history. It would be squarely in violation of the legal principles stated in the Apex Hosiery case. It would be faulty economics. Lastly, it would be in disregard of the facts so eloquently shown not only in this record but in the records in other cases involving the milk industry in Chicago as cited in our brief at page 7.

We earnestly declare that to accept plaintiffs' contention that unionization of the entire industry amounts to price control, suppression of competition and the other evils condemned by the language of the Apex case would result overnight in the destruction of the union in Chicago. It would result in the discharge of union members by the union dairies and the installation of the vendor system with helpers. And the union would be helpless. This is not imaginative logic. These are cold, hard facts.

The weakness in plaintiffs' entire argument is indicated in the statement in the paragraph at the top of page 13 that the defendants "in effect contend". By this statement we see that plaintiffs are not citing the facts in the record. They are giving their interpretation of those facts.

At page 13 plaintiffs make reference to the statements of Assistant Attorney-General Thurman Arnold of November 20, 1939. This, of course, is an opinion by Mr. Thurman Arnold. His "letter" is not the "law." It is in conflict with the Holmes-Brandeis formula stated in the cases we cited in our brief. It is unsound economics. In the case of *United States* v. *Hutcheson,* pending on the docket of this court, the question whether a jurisdictional dispute between unions may constitute a violation of the Sherman Act is already presented for decision. We presume that plaintiffs' counsel was referring to that portion of the Assistant Attorney-General's opinion referring to modern progressive devices. In 8 International Juridical Ass'n Bulletin 53 (December, 1939) there is authoritative refutation of this contention relied on by plaintiffs. We respectfully refer the court to the discussion therein.

But in addition plaintiffs' premise is unsound on the facts. The trial court found that because of the relatively large amount of milk delivered to each retail store by the plaintiff dairy the cost of delivery is substantially less than the cost of delivery of milk on a retail route to the doorstep of the ultimate consumer. In addition, the District Court adopted the finding of fact made by the Master (R. 250, No. 15th). The Master's report finding No. 36 (R. 219-220) adopts the testimony of *defendants'* witnesses to the effect that they have for some time attempted to unionize the employees of the plaintiff dairies and other cut-rate dairies; that the picketing complained of herein is an effort to compel the vendors and wagon drivers employed by the plaintiff dairies to join the defendant union for the purpose of improving working conditions and wages of said vendors and employees of the plaintiff dairies and that the working hours and wage scales of plaintiff's dairy employees is lower than the union scale.

This was based upon the testimony of witnesses at the indicated places of the record.

It is undisputed and even shown by the testimony of plaintiffs' witnesses that the helpers employed by the vendors received wages much lower than the union scale. One of plaintiffs' witnesses described these helpers as young men and boys glad to get three or four dollars a day.

With respect to other cut-rate dairies in Chicago, other witnesses testified concerning the long hours.

The helpers were not protected by Workmen's Compensation insurance. They received no vacations. They received no seniority. They received no sick benefits. In other words, the non-union men gave up part of their rightful share of profits so that their "employer" could attempt to convince the public that *he* was more "efficient" than the union dairy.

To union employees such competition inevitably leads to loss of jobs. Plaintiffs claim that the union should be prevented from protecting its members by means of an injunction restraining an "illegal purpose."

B.

Interstate Commerce.

Under this heading, plaintiffs contend that all cases where the union purpose is shown to be price control or the suppression of competition, etc., the only question remaining is that whether interstate commerce is "involved." If interstate commerce is "involved" plaintiffs then argue that such conduct by the union *ipso facto* amounts to a violation of the Sherman Act.

Doesn't this argument abolish the distinction between State and Federal power? In our economic structure prac-

tically every activity impinges on or affects the commerce between the States. This argument would overrule the cases cited by us in our brief at pages 34-35. It is our contention that even assuming the purpose of a union is that condemned by the Sherman Act, nevertheless as a matter of statutory construction there still are local activities which do not come within the purview of the Sherman Act.

Under plaintiffs' argument a strike by the union employees of a union dairy employing several men would amount to a violation of the Sherman Act if the purpose of the strike was to eliminate the competition of cut-rate milk. This result would twist the language of *Apex Hosiery* v. *Leader* into a repudiation of the earlier principles of the cases cited by us at pages 34-35.

The activity must be more than "local."

II.

Labor Dispute Under Norris-LaGuardia Act.

Under this heading plaintiffs fail even to refer to Section 5 of the Norris-LaGuardia Act.

Plaintiffs admit that the courts have recognized the broadening concepts of the field of permissible labor union activity.

But plaintiffs though stating in words the recognition of the broadening concepts ignore the controversy in the case at bar in the milk industry between:

(1) The Lake Valley Dairy and the defendant union;

(2) The plaintiff C.I.O. industrial union and the defendant craft union; and

(3) The Lake View Cooperative and the defendant union.

The plaintiffs do not seek to comment upon our analysis of the provisions of Section 13 of the Norris-LaGuardia Act as stated in our petition at pages 25-29, nor do they distinguish the cases of this court cited at pages 29-33.

In addition, the analysis of the Circuit Court of Appeals' dissenting judge of the provisions of Section 13 of the Norris-LaGuardia (R. 376-378) indicates an even broader definition of labor dispute.

Plaintiffs under this heading use the same argument to show that the controversy was not a labor dispute within the meaning of the Norris-LaGuardia Act as they used under I, A, *supra,* to show that the union purpose was a violation of the Sherman Act.

The analysis and refutation of plaintiffs' argument that we have made under I, A, *supra,* applies doubly to explode plaintiffs' argument under this heading. It would be ironical to have a court hold that not only has the heavy hand of the Sherman Act been broadened by the *Apex Hosiery* case in so far as the burden of the Sherman Act on labor union is concerned, but that automatically the legislative intent of the Norris-LaGuardia Act has been rejected *sub rosa.*

The Norris-LaGuardia Act was born of the desire to remove Federal District Courts from the business of governing industrial disputes by the injunctive process of Federal equity courts. Plaintiffs would have this court disregard not only the terms of the Norris-LaGuardia Act but also thwart the legislative purpose as shown in our brief at page 40. Plaintiffs ask Federal District courts to determine whether or not a labor dispute exists by weighing the economic argument of the combatants. Plaintiffs here contend that the vendor system is more progressive, more efficient and more economical. Defendants say that the union scale of higher wages, shorter hours, sickness and benefit provisions, the collective bargaining power

presented by the united activity on the basis of a union tips the scales of social justice in their direction. Yet this weighing process was not contemplated or desired by the Federal Congress that passed the Norris-LaGuardia Act. As soon as this weighing process becomes evident the Norris-LaGuardia Act requires the Federal Courts to refuse to interfere by injunctive process. The economic struggle must be settled in the market place or in the legislature forum—not by an injunction.

At page 34 plaintiffs contend that if there is a violation of the Sherman Act there can not be a labor dispute as defined within the Norris-LaGuardia Act. This is unsound. The Norris-LaGuardia Act being passed subsequent to the Sherman Act, of course, supersedes the same. If Section 5 is controlling, then by its very words, it prohibits the Federal Court from issuing an injunction restraining the acts specifically described in Section 4. But we say there is no conflict. We say that Section 20 of the Clayton Act considered in connection with Section 6 *legalizes* certain activities of labor unions and their members. See our petition at pages 44-46.

The Norris-LaGuardia Act deprives the Federal Court of jurisdiction to enjoin the acts described in Section 4 thereof wherever a labor dispute is involved. If there is a labor dispute involved, it should necessarily mean that the action of the union was not such a restraint of trade as may be considered a violation of the Sherman Act. Interpreted in this manner the statutes do not conflict.

III.

Freedom of Speech.

With regard to reference to the First Amendment to the Federal Constitution, we refer the Court to page 48 of our petition. We refer expressly to the fact that a Fed-

eral equity court is here involved at page 47 of our petition and also at page 41 of our brief.

The Circuit Court of Appeals treated the question of freedom of speech as the question of the substantive law of the State (R. 369). It was with reference to that, that we cited cases under the Fourteenth Amendment.

With reference to the right to free speech at page 18, plaintiffs state that no peaceful picketing can exist without the presence of a labor dispute.

The decision in *Cantwell* v. *Connecticut,* 84 L. Ed. 836 cited at pages 45-46 in our brief with regard to picketing as not constituting breach of peace at the common law, is opposed to plaintiffs' contention.

In the case of *Carlson* v. *State of California,* 84 L. Ed. 668 in view of some of the recent decisions in the California lower courts, it is doubtful whether the dispute involved a labor dispute as construed by California courts. Yet this court held that the ordinance prohibiting the picketing involved was invalid under the freedom of speech clause.

The cases we cited at pages 42-44 of our brief are in substance squarely *contra* to this contention of the plaintiffs. To limit the constitutional right of freedom of expression, whether it is by carrying a banner or by distributing handbills or by advertising in the newspapers to those situations where there is a labor dispute would mean that freedom of expression would be destroyed in this country. This is not a case of regulation. This is a case of total prohibition.

Plaintiffs' contentions, pp. 37-40, that tne picketing must be for a lawful purpose would leave it open to the courts of the land to determine what purpose was lawful and what purpose was unlawful. The decisions of the said courts with regard to the nebulous standard of lawful purpose both in the past and at the present give us fair warning that once again Government by injunction would

be reinstated. Once again labor would find that courts had repeated their earlier errors. Cf. *Thornhill* v. *Alabama,* 84 L. Ed. at 665.

The argument seems to be made that a court decree by an injunction is different than an ordinance flatly prohibiting picketing in the sense that the court decree imposes no previous restraint. History of labor cases teaches us the never to be forgotten lesson that a court decision may restrain *all* picketing in the *future.* Under our theory of *stare decisis* a court decision restraining picketing on common law grounds receives a much broader interpretation by courts against the right of picketers than does a legislative act prohibiting picketing.

Consider the effect in Illinois of the Meadowmoor decision by the Illinois Supreme Court.

Defendants do not claim that there is an absolute right to picket in the sense that the state has *no* power to *regulate.* Defendants show the error in plaintiffs' contention that a Federal equity court has the power to prohibit all picketing. Picketing gives the public the opportunity of deciding between the competing claims of the plaintiffs and the defendants. The Federal Constitution guarantees to the public its privilege to be informed as well as guaranteeing the defendant union members the privilege *to* inform.

IV.

Relief for Plaintiffs.

The plaintiffs' argument here discloses that the injunction to prevent picketing is sought to "guarantee" business profits to plaintiffs. Reference is again made to "violence" as basis for injunction. We have already commented on the use of this argument.

Plaintiffs' admit that "many" of defendants' acts when separately viewed are "lawful."

Again, the nub of the case is revealed: is the purpose of unionization unlawful? Defendants say it is not.

Conclusion.

Defendants seek to protect their jobs and union working conditions by unionizing non-union dairies in Chicago. Plaintiffs' dairy, plaintiffs' cooperative and plaintiffs' union seek to avoid this unionization. The Sherman Act has not been violated by defendants. The Norris-La Guardia Act precluded the District Court from granting an injunction against defendants. In any event the Federal Constitution guarantees the defendant union members the right to inform the public that a controversy exists in the milk industry between plaintiffs and defendants.

Wherefore defendants (petitioners) respectfully pray that the judgment of the Circuit Court of Appeals for the Seventh Circuit should be reversed, and the cause remanded to said court with directions to affirm the decree of the District Court.

Respectfully submitted,
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Attorney for Petitioners.

David A. Riskind,
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Of Counsel.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1939.

No. [redacted] 20

MILK WAGON DRIVERS UNION, LOCAL 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, A VOLUNTARY ASSOCIATION; ROBERT G. FITCHIE, JAMES KENNEDY, STEVE SUMNER, FRED C. DAHMS, F. RAY BRYANT, ALVIN F. RICHARDS AND JOSEPH L. PATTERSON,

Petitioners,

VS.

LAKE VALLEY FARM PRODUCTS, INC., A CORPORATION; AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION NO. 819, A VOLUNTARY UNINCORPORATED ASSOCIATION; LAKE VIEW CO-OPERATIVE OF WATERTOWN, WISCONSIN, AN AGRICULTURAL COOPERATIVE CORPORATION OF THE STATE OF WISCONSIN,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

ARTHUR R. SEELIG,
Counsel for Respondents.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1939

No. 770.

MILK WAGON DRIVERS UNION, LOCAL 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, A VOLUNTARY ASSOCIATION; ROBERT G. FITCHIE, JAMES KENNEDY, STEVE SUMNER, FRED C. DAHMS, F. RAY BRYANT, ALVIN F. RICHARDS AND JOSEPH L. PATTERSON,

Petitioners,

VS.

LAKE VALLEY FARM PRODUCTS, INC., A CORPORATION; AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION NO. 819, A VOLUNTARY UNINCORPORATED ASSOCIATION; LAKE VIEW CO-OPERATIVE OF WATERTOWN, WISCONSIN, AN AGRICULTURAL COOPERATIVE CORPORATION OF THE STATE OF WISCONSIN,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

STATEMENT OF FACTS AND ISSUES INVOLVED.

The respondents feel that the "Summary Statement of Matter Involved," which appears at pages 2 to 12 of the

petitioners' application for writ of certiorari is misleading and does not correctly set forth the facts of the case and the issues involved. In order to have the facts appear to fall within certain desired legal rules, the petitioners have distorted the facts and have in many instances omitted important elements. The petitioners attempt to show that the facts disclose a bona fide labor dispute; that their sole purpose is unionization, and that the means employed were lawful and peaceful. Actually the record shows no labor dispute, but rather a case of illegal attempts by a labor union to control price, eliminate competition, regulate methods of business conduct pursuant to an unlawful conspiracy, carried out by means of boycott, violence, intimidation, fraud and other illegal and criminal methods.

The case involves an action brought seeking relief against the acts of the defendants preventing the sale of cut-rate milk in the City of Chicago, Illinois.

Respondents accept the designations adopted by the petitioners and will herein refer to themselves as *plaintiffs*, and will herein refer to petitioners as *defendants*, as in the Court below. Also, for greater convenience, the pertinent sections of the Sherman Act and the Clayton Act are collectively herein referred to as the *Anti-Trust Laws*.

The contention of the plaintiffs supported by the lengthy record and the findings of the District Court, and the decision of the Circuit Court of Appeals is that the plaintiff dairy belongs to a special small group of dairies known as *cut-rate dairies*, because they distribute their products in large quantities to cash and carry stores, which stores in turn sell such milk to the public at reduced prices made possible by the substantial saving in distribution costs over the cost of delivering milk to the door step of the consumer

by means of the milk wagon driver, such as are members of the defendant union, (District Court findings "Ninth" and "Tenth," R. 249). That in order to prevent the sale of cut-rate milk in the city of Chicago, the defendants have conspired to control and restrain the interstate commerce in such milk, to control the price thereof, to prevent competition, to prevent persons from engaging in such business, to ruin and destroy the plaintiff dairy's business, in order to continue their monopoly of the means of distribution of milk in the City of Chicago. That the defendants in order to give effect to such conspiracy have carried out a program wherein the elements of violence, intimidation, boycott and picketing of independently owned milk stores, and the distribution of false and libelous circulars are inextricably intermingled. (District Court findings "Eleventh" and "Twelfth," R. 249; Master's Report, paragraph 44, R. 222 and 223).

The defendants (pages 2 to 4) state that the case arises out of an economic dispute in the milk industry in the city of Chicago. The record and findings indicate that this is true only to the extent that the acts of the defendants are pursuant to their conspiracy and intent to preserve an outmoded and extravagant method of milk distribution, and to prevent the entry into the field, or the continuance in operation, of dairies employing more economic methods of milk distribution. (R. 367).

The plaintiffs' contention is that the subject of the economic dispute is not (as defendants say) whether the plaintiff Lake Valley Farm Products should sign a contract with the defendant union, because neither the lengthy record nor the extensive briefs before the Circuit Court of Appeals, nor the findings of the lower Courts, in-

dicates at any point that such a contract was ever presented for signature or that such a contract was ever intended. The plaintiff dairy employs no drivers, such as are members of the defendant union, but sells all of its products to independent "vendors" who sell the milk to their own customers. (R. 361, 248). An examination of the form of contract which the defendant union has entered with other dairies employing drivers indicates that, such a contract applies only to "employee" drivers. Neither the plaintiff dairy nor the independent distributing stores employ any persons amenable to organization or acceptable to membership in the defendant union.

Since the vendors are independent business people, their conditions of employment can not be the issue of the case and do not present the basis of a labor dispute. Actually, (although not in issue), because of the inherent advantages of cash and carry store delivery, as was found by the District Court, and Circuit Court of Appeals, the vendors are able to distribute five or six times as much milk by working shorter hours, and their net income is larger than the scale set by the defendant union for milk wagon drivers. (R. 362, 368).

The defendants state that they are opposed to the vendor system of distribution and attempt to show that vendors earn less than the amount fixed by their wage scale. They attempted to introduce evidence as to earnings by certain *retail* vendors who deliver to the door step of the ultimate consumer. By introducing this type of evidence, the record indicates that the defendants' real opposition is not to the vendor, but to the entire *method of cut-rate distribution.* As the record reveals, if the vendor delivers to the consumer's home he must make as many stops and can handle only as small a quantity as the company-operated route. The *retail* vendor offers no serious competition to

the drivers of the defendant union. The record fails to indicate any activity on the part of the defendant union directed against retail vendors. All of the illegal activities of the defendant union have been directed against cut-rate dairies and independent stores distributing cut-rate milk. The findings of the lower courts were all uniform that the cut-rate method of store distribution was the real cause of the saving in delivery cost. (District Court findings, "Ninth" to "Twelfth," R. 249; C. C. A. decision, R. 362) This is based upon the record showing that an average of 1200 points of milk can be delivered daily by making 10 to 12 stops over a period of 3 to 5 hours on a cut-rate route, rather than a daily average of about 230 points by making 100 or more stops over a period of 7 or 8 hours. (R. 73, 71, 89, 92, 93, 96, etc.)

Defendants' sworn answer, their form of dairy contract, the extensive record, and the findings of the lower courts, all clearly show that a cut-rate vendor would not be amenable to membership in their union. The testimony is that the union never contacted the plaintiff dairy or any vendor distributing its goods for membership, and that no vendor would be accepted unless he abandoned his method of distribution and thereafter became employed by a dairy. (R. 112, 108; defendants' answer, R. 43 to 59) This latter merely means that if a vendor ceased being a vendor, he, like any other person employed by a dairy as a milk wagon driver, would be acceptable to membership.

The defendants in their petition say that they have no interest in the price of milk. The decision of the Court of Appeals and the findings by the District Court show that all violence is directed at cut-rate stores and cut-rate dairies. Numerous incidents were testified to, in which members of the defendant union actually voiced opposition to the sale of cut-rate milk and asserted demands con-

cerning price. (R. 61-63, 65, 66, 69, 73, 76, 79, 92, 95, 99, 100, 114, 118, 125) The record indicates that the cut-rate method of distribution and sale at lower prices is the only real obstacle to complete monopoly by the defendants. The defendants admit in the record, (which they seek to contradict in their petition), that the plaintiff dairy is of the special class known as cut-rate dairies. (R. 108) The statement of counsel in the petition that all dairies sell cut-rate milk is misleading. The testimony of the officers of the defendant union is that the plaintiff dairy belongs to the small group of cut-rate dairies not employing members of the defendant union, and the findings of all of the lower courts single out the plaintiff in that regard. (R. 107, 108; District Court findings, R. 249; C. C. A. decision, R. 362)

The picketing in opposition to the sale of cut-rate sale, as indicated by the record was not peaceful. As was found by the Master, if the picketing failed, the store would be bombed or its windows broken or other acts of violence would be committed. (R. 222). The picketing, both as to time and place, concurred with and was inextricably bound up with violence. The picketing was merely one of various interwoven means concurrently used. The means used were bombings, window smashing, and other violence, boycott, picketing, destruction of delivery equipment, distribution of handbills and circulars, etc.

Analysis of the Opinion of the Circuit Court of Appeals

The Circuit Court of Appeals for the 7th Circuit, (R. 360 to 370), held that the plaintiffs were entitled to injunctional relief. The decision after stating the nature of the cause, the parties and the pleadings, finds (by adopting the findings of the District Court) the manner in which the milk is daily purchased in and transported from Wiscon-

sin, and at once bottled and sold by the plaintiff dairy to independent business persons called "vendors," for distribution, and in turn, sold by them to the cut-rate cash and carry stores, all within a matter of several hours from its production in Wisconsin. That the milk and cream of the plaintiff dairy is mingled with, indistinguishable from, and sold in competition with other milk and cream, over 40% of which milk and over 75% of which cream is purchased from points outside of Illinois. These facts as to interstate commerce were not denied by the defendants.

The decision distinguishes the plaintiff dairy as a *cut-rate* dairy in that it distributes its milk to retail stores for cash and carry sale at prices substantially less than the prevailing prices for milk delivered by dairies to the home. That because of the relatively large amount of milk delivered to each store, that the delivery cost is substantially less. The Court found that the growth of the cut-rate milk business in Chicago has been accompanied by violence to the distributing stores, and to the dairies, and that the patronage of many of such stores were lost because of the activities of the defendants. That (following the report of the Master in Chancery), the defendant union caused stores to be bombed or their windows to be smashed if the picketing was not successful.

The decision then finds that the efforts of the defendant union constitute a violation of the Anti-Trust Laws; that conspiracy has been shown, and that the object of the conspiracy was the elimination of these cut-rate distributors.

The decision further finds the controversy is over the sale of cut-rate milk, and that no labor dispute is involved. Among other things it is found that the plaintiff dairy employs no persons who would be amenable to membership in the defendant union, and that the vendors in question are

independent contractors; that the only condition upon which the defendant union would accept any vendor as a member would be if he ceased selling cut-rate milk, and if he became an employee of a dairy. The acts of the defendants are declared to constitute an unlawful secondary boycott.

The decision further declares that the argument of free speech may not be availed of, and that the same has been determined by the case of *Meadowmoor Dairies* v. *Milk Wagon Drivers Union of Chicago,* 371 Ill. 377, certiorari denied 308 U. S., on October 23, 1939. It may be noted that the defendants in their answer plead that the findings of the court in the earlier *Meadowmoor* case are binding upon the parties to this cause. (R. 56).

The decision further found that because of the great number of stores involved and the magnitude and seriousness of the activities that the local police officers were unable to control the situation, and that the plaintiffs have no adequate remedy at law.

The decision points out that its only difference from the District Court is as to the application of the law to the facts which both courts and the Master had found; that the Court of Appeals, among other things, in determining as to the question of Anti-Trust violation, applied the more recent tests as supplied by the *National Labor Relations Cases,* 301, U. S. 1; *Santa Cruz Packing Company* v. *National Labor Relations Board,* 303 U. S. 453; *National Labor Relations Board* v. *Fainblatt,* 306 U. S. 601; and *United States* v. *Rock Royal Cooperative, Inc.,* 307 U. S. 533; and had not felt itself limited to the arbitrary test of the "stream of commerce" doctrine, familiar in the application of Federal and State taxes. Comment is made on the illegal method and scheme employed by the defendants

as an indication of the fact that the picketing was not peaceful, but was involved with and part of the illegal and violent tactics of the defendants.

The testimony upon which the findings of fact were made by the courts below and by the Master, concerning the methods employed are found in the record at the following pages:

Bombings: (R. 66, 69, 76, to 129).

Smashing of Store Windows: (R. 65 and 66, 60, 61, 62, 69, 73, 76, 78, 79).

Seizure and Destruction of Milk Trucks: (R. 66, 77, 78, 116 and 122).

Picketing and Concurrence of Violence: (R. 60, 61, 62, 80-81, 115, 73, 76, 129).

Violence and *Destruction Cases Defended and Settled by Defendant Union*: (R. 69, 78, 119, 126).

Efforts to Control Price and To Eliminate Sale of Cut-Rate Milk: (R. 61-62, 63-65, 66, 73, 76, 79, 80, 91, 92, 95, 99, 100, 114, 118, 125, 127).

Findings of Fact by the District Court.

As is indicated by the decision of the Circuit Court of Appeals, there is no inconsistency as to the facts. The only difference arises as to the legal conclusions to be applied to these facts.

The District Court after finding the facts as to interstate commerce, and the sale by the plaintiff dairy to the vendors for distribution by them to their store customers, among other things found (in substance) as follows:

That the plaintiff dairy is a *cut-rate* dairy, in that it distributes its milk through retail stores at cash

and carry sale, at prices substantially less than the generally prevailing price for milk delivered by the dairy to the home. (R. 249).

That the cost of delivery to the store is substantially less than the cost of delivering milk on a retail route to the door step of the ultimate consumer, because of the relatively large amount of milk delivered to each retail store by the plaintiff dairy. (R. 249).

"Eleventh: That the growth of the cut-rate milk business in Chicago has been accompanied by violence to the distributing stores, and that stores selling plaintiff dairy's products, have had windows smashed, have been submitted to other acts of violence; that cut-rate dairy plants have been bombed and have had machinery smashed and subjected to other acts of violence; that delivery trucks of cut-rate dairies have been kidnapped and destroyed, and other acts of violence committed." (R. 249).

"Twelfth: That the picketing by the Defendant Union has all taken place at, and in front of stores selling the products of the plaintiff dairy and no picketing has taken place at the plaintiff dairy plant; that in some instances deliveries of other necessary food products into stores selling plaintiff dairy's products have ceased." (R. 249).

"Fourteenth: Fifteen to twenty stores distributing the products of plaintiff dairy were lost in the month preceding the filing of the present Bill of Complaint; twenty-five to thirty stores were similarly lost since the commencement of the action; that more than one hundred stores of plaintiff dairy have been picketed; that there is no way to ascertain the number of consumer patrons lost by the acts of the defendants." (R. 250).

The Master in Chancery, although holding against the respondents upon the *questions of law* involved, was compelled to specifically find as to violence and the inseparability of picketing from illegal acts as follows:

> "It also appears from the evidence before the Master that certain of the cut-rate milk stores that handled the products of the Plaintiff Dairies were picketed by members of the Defendant Union; that such picketing was usually indulged in for a number of days during which time said pickets sought to induce the offending storekeepers to discontinue the purchase of such milk from the Plaintiff Dairies; that in several instances where their efforts were unsuccessful said pickets were withdrawn and within a few days thereafter, usually during the night the store of the storekeeper (some of whom were poor women struggling to make a living) was either bombed or bricks were thrown through the plate glass windows of such stores or other acts of violence were committed. To request the Master to conclude and find, in the absence of proof of the identity of the guilty culprits, that there was no connection between such acts of violence and the Defendant Union, or some of its members, is to overtax the credulity of the Master.
>
> The Master cannot condone or too severely condemn the resort to such malicious and cowardly conduct in support of any cause. Such lawless conduct has no place under our form of Government and the few lawless, radical union leaders or members who resort thereto are not only a blight upon the righteous cause of honest labor but reflect discredit upon our country and upon our American civilization as well." (R. 222).

Proceedings in the Courts Below.

By the sworn answer of the defendants filed in the District Court, it is admitted that they have caused the picketing complained of, and by the copy of the contract form attached to such answer, referring only to employed drivers, it is indicated that vendors are not acceptable to membership in the defendant union. Also it is shown by their answer that no efforts were made to have vendors join that union, but rather to have vendors cease to operate as such. (Answer R. 43 to 59).

The defendant union by its officers admitted that by agreement with other unions, they stopped the delivery of other food commodities into the various independent stores distributing the products of the plaintiff dairy (R. 106), and also admitted that vendors as such were not taken into the defendant union and that no efforts were made at any time to submit a contract to the plaintiff dairy or to organize its workers (R. 112, 108); that the defendant union has about 5300 milk wagon drivers as members and that the independent cut-rate dairies employ a total of 283 men. (R. 108).

SUMMARY OF ARGUMENT.

I.

This Court has determined that where the object to be accomplised by a labor union is illegal and outside the normal activities of unionization, or where the means employed by a labor union to further its own ends are of themselves illegal, relief from such acts may be had by injunction.

A.

If the object is unlawful, all means employed in furtherance of such object may be enjoined.

B.

If illegal means are employed which are inseparable from legal means, all means may be enjoined.

II.

This Court has determined that conspiracies and combinations by any association of persons having for their purpose the control of price, elimination of competition and the effectuations of monopolies which burden and restrain interstate commerce, violate the Anti-Trust Laws of the United States and are enjoinable.

A.

The Norris-LaGuardia Act grants no immunity to labor unions if their acts are illegal and violate the Anti-Trust Laws.

III.

This Court has determined that the constitutional guarantee of free speech does not prevent relief by injunction from words pursuant to illegal activities and purposes.

ARGUMENT.

I.

This Court has determined that where the object to be accompished by a labor union is illegal and outside the normal activities of unionization, or where the means employed by a labor union to further its own ends are of themselves illegal, relief from such acts may be had by injunction.

A.

If the object is unlawful, all means employed in the furtherance of such object may be enjoined.

The defendants in support of their contention that the Federal Courts by virtue of the provisions of the Norris-LaGuardia Act, have no jurisdiction to issue an injunction, after commenting upon the provisions of the Act itself, refer to only three decisions of this Court: *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552; *Lauf* v. *Schinner*, 303 U. S. 323; and *Senn* v. *Tile Layers' Union*, 301 U. S. 468. These cases refer only to legal objectives of persons representing laborers sought to be accomplished by legal means, and obviously have no application in the present case. Of the decisions by lower courts cited by defendants: *Levering* v. *Morrin*, 71 F. (2d) 284; *Blankenship* v. *Kurfman*, 96 F. (2d) 450; *Grace Co.* v. *Williams*, 96 F. (2d) 478, the courts there determined that both the object and means used were lawful.

This Court in several decisions has held that if the object is illegal, *i. e.* an object not one of legitimate union concern, that relief, against all means used, may be had by injunction.

Duplex Printing Press Co. v. *Deering,* 254 U. S. 443.

Gompers v. *Buck's Stove & Range Co.,* 221 U. S. 418.

Eastern States Retail Lumber Dealers' Association v. *United States,* 234 U. S. 600.

Loewe v. *Lawlor,* 235 U. S. 522.

American Steel Foundries v. *Tri-City Trades Council,* 257 U. S. 184.

Meadowmoor Dairies, Inc. v. *Milk Wagon Drivers' Union,* 371 Ill. 377; certiorari denied 308 U. S. .....; 84 L. ed. 95.

Specifically considering the applicability of the Norris-LaGuardia Act, the Circuit Court of Appeals for the Seventh Circuit has similiarly held that if the purpose of the union activities is unlawful an injunction may issue against picketing and other means. *Scavenger Service Corporation* v. *Courtney,* 85 F. (2d) 825, at page 830:

> "We are clearly of the opinion that no labor question is involved, and the District Court does not therefore deny jurisdiction by reason of the labor injunction act (Norris-La Guardia Act, U. S. C. A. Sec. 105 to 115)."

and at page 833:

> "The conspiracy was one to ruin appellant's business. Therefore, the means adopted were unlawful. • • • If, therefore, individuals conspired to commit the wrongful act of ruining appellant's business, the

means, even though of themselves innocent, were actionable. Aside from whether the picketing was peaceful (*American Steel Foundries* v. *Tri-City Central Trades Council,* 257 U. S. 184, 42 S. Ct. 72, 66 L. Ed. 189, 27 A. L. R. 360), it was unlawful when its object was as here disclosed."

Also: *Fehr Baking Co.* v. *Bakers' Union,* 20 F. Supp. 691.

As the defendants themselves set forth in their brief, pages 25 to 28, a labor dispute must involve by the terms of the Norris-LaGuardia Act, either (a) terms or conditions of employment, or (b) the representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment. If the defendants seek exemption under this Act, they have the burden of showing that the present case falls within its terms.

Since the Circuit Court of Appeals, upon the record and the District Court's findings of fact, has found the existence of a conspiracy to prevent the sale of cut-rate milk and to control the distribution of milk in Chicago, (R. 366 and 367) it becomes apparent that the Norris-LaGuardian Act cannot apply. Such purposes cannot be the basis of a labor dispute.

If illegal means are employed which are inseparable from legal means, all means may be enjoined.

This Court has held that if illegal means are employed in such relation to other means, of themselves lawful, so as to be inseparable therefrom, that all means, regardless of the purpose to be accomplished, become unlawful.

Reference may again be had to the case of *Duplex Printing Press Co.* v. *Deering,* 254 U. S. 443, at page 478, and to the case of *Gompers* v. *Buck's Stove and Range Co.,* 221 U. S. 418, at page 439.

In the present case as set forth at length in the decision of the Circuit Court of Appeals, the Master in Chancery found that picketing and violence were but concurring means to accomplish a desired end. When a store failed to yield after what appeared to be "peaceful picketing," the pickets were withdrawn and the store bombed or its windows smashed. (R. 363 of decision; R. 222 and 223 of Master's Report).

Since most of the decisions as to illegal purposes and activities of labor unions arise from the determination of the applicability of the Anti-Trust Laws, and are so presented under that topic hereinafter, only a few references have been made at this point, and wherever possible to cases dealing exclusively with the phase of the question above considered.

The contention of the plaintiffs is that decisions construing normal and legal union objectives are not applicable to the present case. That upon the findings of illegality both as to purpose and means made by the decision of the Circuit Court of Appeals, upon the findings of fact by the District Court and the report of the Master in Chancery, only cases in which similar elements of illegality are present, may be applied.

II.

This Court has determined that conspiracies and combinations by any association of persons having for their purpose the control of price, elimination of competition and the effectuation of monopolies which burden and restrain interstate commerce, violate the Anti-Trust Laws of the United States and are enjoinable.

Facts and Findings as to Interstate Commerce.

The Circuit Court of Appeals determined that the immediate result of the activities of the defendants was to retard the flow of milk in interstate commerce.

The facts as to the flow of milk into Chicago, from other states and its immediate distribution to the consumer is not denied by the defendants, nor do they in their present petition argue the question of interstate commerce, except to contend that their activities directed at such distribution, do not burden such commerce; that they are granted special immunity.

The record indicates that fluid milk is a perishable commodity which cannot be stored, and by health regulation must reach the consumer within a matter of hours after its production. In view of these findings, there can be but little question that fluid milk is in a continuous flow of interstate commerce until it reaches the consumer, and any interference before it is in the hands of such consumer, effects and burdens interstate commerce.

In addition, the record shows actual interference with delivery trucks which were the instrumentality of and were

in interstate shipment. (R. 65, 77, 78, 116, 122). The Circuit Court of Appeals comments that there is no conflicting testimony as to the fact of such interference. (R. 366).

Interference with the sale of milk in the City of Chicago violates the Anti-Trust Laws of the United States.

In addition to the foregoing "factual" conclusion that milk distribution in Chicago is a part of interstate commerce, the Secretary of Agriculture of the United States, pursuant to authority vested in him, and after public hearing and findings made under the Agricultural Marketing Act of 1937 (50 Stat. 246), promulgated a certain marketing agreement identified as Order No. 41, regulating the handling of milk in the Chicago, Illinois, marketing area, thereby declaring that the handling and marketing of milk in such area is in the current of interstate commerce. This declaration and order is in accord with the decisions of this Court as to the New York milk marketing area.

United States of America v. *Rock Royal Cooperative, Inc.*, 307 U. S. 533, determined June 5, 1939.

In addition, the contention of the plaintiffs that interference with Chicago distribution may violate the Anti-Trust Laws concurs with the expressed position taken by the Anti-Trust Division of the Department of Justice of the United States. In the case of *United States of America* v. *The Borden Co., et al.*, this Court, October term 1939, No. 397, reversed the decision of the District Court for the Northern District of Illinois. A large group of defendants, including the defendants in the present case had been indicted for violating the Anti-Trust Laws, for the very acts of price-fixing, monopoly, and elimination of competion involved in the present proceeding. This Court, on December 4, 1939, determined that the indictment in that

case was sufficient, holding, however, that certain questions peculiar to labor unions were not open to consideration on that appeal.

That local sales may be considered a part of interstate commerce, because of their proximity to or effect upon the same has been well established by decisions of this Court.

National Labor Relations Board v. *Jones & Laughlin Steel Corporation,* 301 U. S. 1.
Baldwin v. *Seelig,* 294 U. S. 511.
National Labor Relations Board v. *Fainblatt,* 306 U. S. 601.
Santa Cruz Packing Co. v. *National Labor Relations Board,* 303 U. S. 453.

Similar decisions have been rendered by this Court as to the intermingling of local transactions with interstate commerce in the cases of:

Consolidated Edison Company v. *National Labor Relations Board,* 305 U. S. 197.
Currin v. *Wallace,* 306 U. S. 1.
Mulford v. *Smith,* 307 U. S. 38.
Nebbia v. *New York,* 291 U. S. 502.

Decisions of this Court construing the Anti-Trust Laws have uniformly held that acts of themselves local will be enjoined whenever necessary for the protection of interstate commerce against restraints:

Local 167, I. B. T. v. *United States,* 291 U. S. 293.
Loewe v. *Lawlor,* 208 U. S. 274.
Eastern States Lumber Dealers Association v. *United States,* 234 U. S. 614.
Bedford Cut Stone Co. v. *Journeymen Stone Cutters' Association,* 274 U. S. 37.
Duplex Printing Press Co. v. *Deering,* 254 U. S. 443.

The Circuit Court of Appeals, in its decision, and in accord with the findings of fact of the District Court, also finds that the controversy arises out of the opposition of the defendants to the method of distribution and the manner of conduct of the business of the plaintiff dairy. This Court has frequently announced that combinations and conspiracies which involuntarily limit third parties so that they may engage in interstate trade only upon the terms and conditions and in the manner established, are *per se* direct and substantial burdens upon interstate commerce.

Interstate Circuit, Inc. v. *United States,* 305 U. S. 28.

Local 167, I. B. T. v. *United States,* 291 U. S. 293.

Bedford Cut Stone Co. v. *Stone Cutters' Association,* 274 U. S. 37.

Industrial Association v. *United States,* 268 U. S. 64.

Duplex Printing Press Co. v. *Deering,* 254 U. S. 443.

Loewe v. *Lawlor,* 208 U. S. 274.

Montague & Co. v. *Lowry,* 193 U. S. 38.

The defendants seek to prevent persons from engaging in the cut-rate cash and carry distribution in order that their control of the means of distribution might be perpetuated.

Since the activities of the defendant union were for illegal purposes, they may not be justified as having been done to further their own ends or to protect their own interests. Such a purpose has never justified an illegal program.

Interstate Circuit v. *United States,* 306 U. S. 208.

United States v. *Brims,* 272 U. S. 549.

Eastern States Retail Lumber Dealers' Association v. *United States,* 234 U. S. 613.

Duplex Printing Press Co. v. *Deering,* 254 U. S. 443.

Bedford Cut Stone Co. v. *Journeymen Stone Cutters' Association,* 274 U. S. 37.

The Circuit Court of Appeals in the present case (R. 367), found that a study of the entire record was quite convincing of the fact that the entire controversy is over the attempt of the defendants to prevent the sale of cut-rate milk. The controversy arises out of the attempt of the defendants to arbitrarily control the price of milk by preventing a more economic method of milk distribution. This Court has declared that the attempt to control the price of a commodity is itself a restraint of interstate trade:

United States v. *Trent Potteries,* 273 U. S. 392.

Interstate Circuit v. *United States,* 306 U. S. 208.

Admittedly the defendant union represents 5,300 of the less than 5,600 men who deliver milk in Chicago (R. 66, 76). The elimination of the small groups of cut-rate dairies would give the defendants complete control. This fact supplies the motive for the violence found by the lower courts to have accompanied the cut-rate business throughout. If the purpose is monopoly, all means may be enjoined. Reference may again be had to such decisions of this Court as *Local 167, I. B. T.* v. *United States,* 291 U. S. 293; *United States* v. *Brims,* 272 U. S. 549; *Duplex Printing Press Co.* v. *Deering,* 254 U. S. 443, and other decisions herein elsewhere referred to.

The secondary boycott for such purposes has been consistently declared to be illegal by the Circuit Court of Appeals of the Seventh Circuit in which this case arises: *Scavenger Service Corporation* v. *Courtney,* 85 F. (2d)

825; and by the Supreme Court of the State of Illinois: *Wilson* v. *Hey,* 232 Ill. 389; *Carpenters Union* v. *Citizens Committee,* 333 Ill. 225; *Anderson Lind Manufacturing Co.* v. *Carpenters Union,* 308 Ill. 488; *Kemp* v. *Division 241,* 255 Ill. 213; *Barnes* v. *Typographical Union,* 232 Ill. 424; *Schuster* v. *International Association of Machinists,* 293 Ill. App. 177; *Fenske Bros.* v. *Upholsterers Union,* 358 Ill. 239; *Meadowmoor Dairies, Inc.* v. *Milk Wagon Drivers Union,* 371 Ill. 377; certiorari denied 308 U. S. .....; 84 L. ed. 95.

Existence of conspiracy is usually established by the acts committed and direct testimony of the conspiracy is not required; the defendants are charged with the natural consequences of their acts and no specific intent to restrain interstate commerce is required.

Interstate Circuit v. *United States,* 306 U. S. 208.

Eastern States Lumber Dealers' Association v. *United States,* 234 U. S. 614.

United States v. *Anderson,* 101 F. (2d) 325, determined January 17, 1939, in the Seventh Circuit.

In the case of *Leader* v. *Apex Hosiery Co.*, 108 F. (2d) 71, cited by defendants in which this Court has granted certiorari (February 26, 1940), the lower Court held that the "interruption to commerce (was) by way of stoppage of the appellee's manufacturing operations, was comparatively slight and indirect," page 80. Factually this case appears to differ greatly from the present where the entire market has been declared to be in interstate commerce, where the interference is with distribution and even with transportation, and where efforts to control price and eliminate competition, and the numerous other "special" circumstances are present. This Court will determine the correctness of the lower Court's decision upon the particular circumstances of the case.

A.

The Norris-LaGuardia Act grants no immunity to labor unions if their acts are illegal and violate the Anti-Trust Laws.

The defendants seek immunity by presenting the argument in their brief as though peaceful picketing was the only means used and unionization was the sole object. If such were the facts, the Anti-Trust Laws would not be violated regardless of the Norris-LaGuardia Act.

This Court in several decisions, which decisions have been followed throughout by the lower courts, has held that there are definite limitations as to what labor unions lawfully may do under the *Clayton Act*, and that such Act may not be used as a cloak of immunity for illegal activities:

Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.

Bedford Cut Stone Co. v. *Stone Cutters Association*, 274 U. S. 37.

United States v. *Brims*, 272 U. S. 549.

Coronado Co. v. *United Mine Workers*, 268 U. S. 295.

United States v. *Norris*, 255 Fed. 423.

Alco-Zander Co. v. *Amalgamated Clothing Workers*, 35 F. (2d) 203.

Decorative Stone Co. v. *Building Trades Council*, 18 F. (2d) 333.

United States v. *National Association of Window Glass Manufacturers*, 287 Fed. 228.

Irving v. *Neal*, 209 Fed. 371.

Buyer v. *Guillan*, 271 Fed. 65.

Quinlivan v. *Dail-Overland Co.*, 274 Fed. 56.

United States v. *Railway Employees, Dept. A. F. L.*, 283 Fed. 479.

The Norris-La Guardia Act, by its very terms excepts cases where there is fraud or violence. (Section 4, subsection). The Courts have followed this construction: In *United Electrical Coal Companies* v. *Rice,* 80 F. (2d) 1, (C. C. A. 7th 1935), at page 8:

> "The public is amply protected as the bill is now drawn. It is a mistaken notion that some have that all injunctions are proscribed. There still is left to the Federal Courts the right to issue injunctions when there are unlawful acts threatened or committed; when there is fraud, when there is violence, and when there is crime, injunctions may issue. When any of those things are threatened or committed, injunctions may issue.
>
> The intention of Congress was thus clearly expressed. It was evidently not intended to take from courts of equity, jurisdiction of suits to restrain unlawful acts or acts of violence."

This Court in the *National Labor Relations Cases,* 301 U. S. 1, stated at page 31:

> "It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of congressional power. *Acts having that effect are not rendered immune because they grow out of a labor dispute.*

This Court, in the case of *Virginia Railway Co.* v. *System Federation,* 300 U. S. 515, determined that it was not the intention of the Railway Labor Act to be a cloak for criminal racketeering activities under the guise of a labor dispute.

In the case of *Senn* v. *Tile Layers Protective Union,* 301 U. S. 468, this Court again expressly excepted all cases other

than bona fide labor disputes having lawful purposes to be effected by lawful means. This Court differentiated it from cases such as the present:

> "The sole purpose of the picketing was to acquaint the public with the facts and by gaining its support to induce Senn to unionize his shop." (page 480).

The various lower courts have likewise held that illegal acts may not be protected under the Norris-La Guardia Act, and injunction has been granted wherever it has been first determined the purpose or means were unlawful. *Scavenger Service Corporation* v. *Courtney,* 85 F. (2d) 825. *Fehr Baking Co.* v. *Bakers' Union,* 20 F. Supp. 691; *Mayo* v. *Dean,* 82 Fed. (2d) 554. The very cases cited by defendants at pages 36 and 37 of their brief clearly drew this distinction, and *injunction was granted* where illegality was shown. In the cases of *International Brotherhood of Teamsters* v. *International Union,* etc., 107 F. (2d) 871; *Houston Motor Lines* v. *Local Union,* 24 F. Supp. 619; *Pauly Jail Building* v. *International Association of Bridge Workers,* 29 F. Supp. 15; cited by defendants, *injunctions were granted,* and in the case of *Williams* v. *Birl,* 105 F. (2d) 940, the facts were clearly differentiated and the case affirms that the Norris-La Guardia Act is limited to legal labor disputes.

In the cases of *Terrio* v. *Nielson Co.,* 30 F. Supp. 77, and *Diamond Hosiery* v. *Leader,* 20 F. Supp. 467, cited by the defendants the Courts held that *interstate commerce was not involved* and the Norris-La Guardia Act need not be considered.

In the case of *Exchange Bakery* v. *Rifkin,* 245 N. Y. 260, also cited by the defendants, the Court there said:

> "It is quite true that, where unlawful picketing has been continued, where violence and intimidation have

been used, * * * a broad injunction *prohibiting all picketing may be granted.*" (Italics added.)

The decision in *Williams* v. *Quill*, 277 N. Y. 1, also cited by the defendants, makes a similar statement.

III.

This Court has determined that the constitutional guarantee of free speech does not prevent relief by injunction from words pursuant to illegal purposes and activities.

This question has been determined adversely to the defendants' contention in several decisions. In the case of *Aikens* v. *Wisconsin*, 195 U. S. 194, which case involved the construction of a Wisconsin statute on conspiracy wilfully to injure a trade or business, this Court in its opinion by Mr. Justice Holmes, at page 206 said:

> "No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or commissions may be made a step in a criminal plot, and if it is a step in a plot, neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by law."

This Court considered an analogous set of facts in the case of *Gompers* v. *Buck's Stove and Range Co.*, 221 U. S. 418. The question of free speech was considered in connection with the publication of an "unfair" list. At page 437, this Court said:

> "The defendant's attack on this part of the injunction raises no question as to an abridgement of free speech, but involves, the power of a court of equity to

enjoin the defendants from continuing a boycott, which, by words and signals, printed or spoken, caused or threatened irreparable damage."

The principle of the *Gompers* case, *supra,* was followed in the case of *Near* v. *Minnesota,* 283 U. S. 697.

That means otherwise lawful and ordinarily permissible as an exercise of the right of free speech may be condemned because of the purposes to which they are put has been determined by this Court in the cases of:

Dorchy v. *Kansas,* 272 U. S. 306.
Duplex Printing Press Co. v. *Deering,* 254 U. S. 443.

A precedent for the denial of certiorari in the present case is found in the case of *Meadowmoor Dairies, Inc.* v. *Milk Wagon Drivers Union of Chicago, No. 753,* (the same defendants as in the present case) 371 Ill. 377, certiorari denied by this Court, at 308 U. S. ....., on October 23, 1939. In that case the same defendants raised the same argument of free speech. The Supreme Court of the State of Illinois upon a similar record, there found illegality of purpose and means as did the Circuit Court of Appeals in the present case.

A similar precedent exists in the case of *Hughes* v. *Motion Picture Machine Operators,* 282 Mo. 304, 221 S. W. 95; certiorari denied, 254 U. S. 632.

The cases referred to by the defendants at pages 48 and 49 of their brief involving the validity of city ordinances or of state law do not involve the question in the present case. Nor do those cases there cited referring to the denial of liberty as to trial procedure. Those cases fall within the limits of the cases of *Lovell* v. *Griffin,* 303 U. S. 444, and *Palko* v. *Connecticut,* 302 U. S. 319.

The case of *Senn* v. *Tile Layers' Union*, 301 U. S. 468, only protects the right of free speech where no illegality of purpose or means is present. The same limitation is set by this Court in the case of *American Steel Foundries* v. *Tri-City Council*, 257 U. S. 184, also referred to by the defendants.

CONCLUSION.

In conclusion, the plaintiffs-respondents respectfully submit that the decision of the Circuit Court of Appeals is in accord with the applicable decisions of this Court, and that the petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the 7th Circuit should be denied.

Respectfully submitted,

ARTHUR R. SEELIG,

Counsel for Respondents.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1940

No. 20

MILK WAGON DRIVERS UNION, LOCAL 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, A VOLUNTARY ASSOCIATION; ROBERT G. FITCHIE, JAMES KENNEDY, STEVE SUMNER, FRED C. DAHMS, F. RAY BRYANT, ALVIN F. RICHARDS AND JOSEPH L. PATTERSON,

Petitioners,

VS.

LAKE VALLEY FARM PRODUCTS, INC., A CORPORATION; AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION NO. 819, A VOLUNTARY UNINCORPORATED ASSOCIATION; LAKE VIEW CO-OPERATIVE OF WATERTOWN, WISCONSIN, AN AGRICULTURAL COOPERATIVE CORPORATION OF THE STATE OF WISCONSIN,

Respondents.

Brief on Behalf of Resp[illegible]s.

ARTHUR R. SEELIG,
Counsel for Respondents.

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IN THE

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OCTOBER TERM, A. D. 1940

No. 20

MILK WAGON DRIVERS UNION, LOCAL 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, A VOLUNTARY ASSOCIATION; ROBERT G. FITCHIE, JAMES KENNEDY, STEVE SUMNER, FRED C. DAHMS, F. RAY BRYANT, ALVIN F. RICHARDS AND JOSEPH L. PATTERSON,

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Respondents.

Brief on Behalf of Respondents.

To the Honorable Charles Evans Hughes, Chief Justice and the Associate Justices of the Supreme Court of the United States:

The respondents accept the nomenclature adopted by the petitioners. We shall refer to ourselves as plaintiffs, as in the trial court, and to our opponents as defendants.

OPINION OF THE COURT BELOW.

The opinion of the Circuit Court of Appeals for the Seventh Circuit (R. 359-378) is reported in 108 F. (2d) 436-448. No opinion was written by the United States District Court for the Northern District of Illinois; findings of fact and conclusions of law were made by the District Court (R. 247-251).

INTRODUCTORY.

The plaintiffs, in order not to be compelled to repeat the "Statement of Facts and Issues Involved" adopt the same as it appears at pages one to six of their "Brief in Opposition to Petition for Writ of Certiorari" heretofore filed herein.

The defendants under the title of "Preliminary" on pages two to four of their brief, in the portion of the brief usually devoted to a presentation of the facts as provided by the rules of this Court, advance various arguments and make reference to various text and other treatments of labor problems. The plaintiffs feel that these contentions and references are correctly part of the "argument" and will give their answer to these points in that part of this brief. These texts and legal periodical treatments are in the main about ten years old, and at that date charted unexplored seas. Since then most of the questions there posed have been decided by legislative enactment or judicial determination.

THE FACTS.

The plaintiffs are a dairy maintaining a pasteurizing plant in the city of Chicago, Illinois, a milk producers' co-operative of the State of Wisconsin, and a labor union affiliated with the Committee for Industrial Organization. The plaintiff dairy belongs to that small group of six or

eight Chicago dairies distributing their products by the cash and carry method of distribution through cut-rate milk stores. The milk is received in Wisconsin by the producers' cooperative and is daily shipped by tank trucks to the plaintiff dairy where it is immediately pasteurized and sold to independent distributors who deliver such product at wholesale to approximately four hundred retail stores (District Court finding: "Third", R. 248). The distributors are referred to as "vendors". The plaintiff union is an industrial union, and has organized the plaintiff dairy. The vendors are members of the plaintiff union (R. 295).

The defendant union is a *craft* union representing milk wagon drivers who are *employees* of the Chicago dairies, except the small group of cash and carry dairies which distribute milk to cut-rate stores (R. 109). The dairies employing members of the defendant union are not cash and carry dairies. These other dairies deliver their products in small units (one or two bottle average) to the doorstep of the ultimate consumer at higher prices than obtain for the sale of cash and carry milk. The individual defendants are officers and agents of the defendant union.

The record of the evidence further shows that until about five years before the filing of the case, there was no cash and carry cut-rate distribution of milk in the city of Chicago (R. 65).

The plaintiffs have maintained that the Master in Chancery and the District Court did not find the facts against the plaintiffs. The plaintiffs urge that the facts as found by the District Court, if interpreted in the light of correctly applicable legal principles, would compel a decision in their favor. The District Court made the following, among other findings:

> Ninth: The Plaintiff, Lake Valley Farm Products, Inc., is a cut-rate dairy in that it distributes its milk

through retail stores at cash and carry sale at prices substantially less than the generally prevailing price for milk delivered by the dairy to the home.

Tenth: Because of the relatively large amount of milk delivered to each retail store by the plaintiff dairy, the cost of delivery is substantially less than the cost of delivering milk on a retail route to the doorstep of the ultimate consumer.

Eleventh: That the growth of the cut-rate milk business in Chicago has been accompanied by violence to the distributing stores, and that stores selling plaintiff dairy's products, have had windows smashed, have been bombed, set afire, stench bombs thrown and have been submitted to other acts of violence; that cut-rate dairy plants have been bombed and have had machinery smashed and subjected to other acts of violence; that delivery trucks of cut-rate dairies have been kidnapped and destroyed, and other acts of violence committed (R. 249).

Paragraph 44 of the Master's Report (R. 222), is as follows:

It also appears from the evidence before the Master that certain of the cut-rate milk stores that handled the products of the Plaintiff Dairies were picketed by members of the Defendant Union; that such picketing was usually indulged in for a number of days during which time said pickets sought to induce the offending storekeepers to discontinue the purchase of such milk from the Plaintiff Dairies; that in several instances where their efforts were unsuccessful said pickets were withdrawn and within a few days thereafter, usually during the night the store of the storekeeper (some of whom were poor women struggling to make a living) was either bombed or bricks were thrown through the plate glass windows of such stores or

other acts of violence were committed. To request the Master to conclude and find, in the absence of proof of the identity of the guilty culprits, that there was no connection between such acts of violence and the Defendant Union, or some of its members, is to overtax the credulity of the Master.

The findings of the District Court are based upon the record showing that an average of twelve hundred pounds of milk can be delivered daily by making ten to twelve stops over a period of three to five hours on a cash and carry route, rather than a daily average of about two hundred thirty points requiring more than one hundred stops over a period of seven or eight hours on a retail route of the defendant union (R. 71, 73, 89, 92, 93, 96, etc.).

The opinion of the Circuit Court of Appeals found (R. 369-370), and the plaintiffs urge, that the conclusions of law reached by the District Court are inconsistent with the findings of fact.

Errors in Defendants' Statement As To the Facts.

At pages five to seven of their brief, the defendants make numerous observations under the heading: "Facts Overlooked by Plaintiffs." Since these observations contradict the record, the plaintiffs are compelled to correct these references.

The statement on page five that the vendors earn less than drivers, or that their working conditions are unfavorable contradicts the record and the findings of the District Court, that it is the method of *large volume store sales* and fewer required stops and not the matter of pay that determines (R. 249).

The references to R. 300, 337 and 338 made by the defendants, appear to have no application whatsoever to the

question of income. (That the vendors actually have higher incomes and better conditions please see R. 67, 68, 73 and 74, etc., and District Court Findings Nos. "Ninth" to "Twelfth," R. 249.)

The statement that the vendors perform "milk wagon delivery service" is incorrect, as shown by the record. The vendors deliver to cash and carry stores, make only ten or twelve stops, and distribute on an average of twelve hundred bottles. The defendant union retail drivers deliver to consumers' homes and make on an average of over one hundred stops delivering an average of two hundred thirty bottles. The District Court found that it was the very difference in these two methods of distribution that made possible the cut-rate price.

The Wagner Dairy referred to at the top of page six of defendants' brief was offered membership in the defendant union only if it would cease selling cut-rate milk (R. 120).

The statement that Lake Valley Farm Products had been approached by the defendant union to sign a contract is unqualifiedly incorrect. The record shows that the Lakeview Dairy, a predecessor company then *employing* drivers, had been denied membership in the defendant union because it was a cut-rate dairy (R. 125). Perhaps by inadvertence the several page references to the record at this point fail to disclose a single word dealing with any effort to organize.

The statement that all dairies, except one, sell cut-rate milk is inserted to mislead this Court into believing that there is no distinction between dairies distributing by means of the cash and carry store method and those distributing by the defendant union. No such evidence appears in the record; the officials of the defendant union testified that there are only a half-dozen cash and carry

dairies and the District Court so found (Finding Ninth, R. 249, also testimony of defendant Bryant, R. 107 and 108).

The defendant C.I.O. union is not in competition with the defendant union. The defendant union would not accept vendors of the plaintiff dairy and could not under their by-laws or contract (R. 107, 109, 112, Exhibit 2; R. 147-154). The plaintiff union accepted members only from dairies selling by the cash and carry methods and unacceptable to the defendant union (R. 84).

CONFLICTING CONTENTIONS AND CONTROVERTED ISSUES.

It is the plaintiffs' contention that the findings of fact of the District Court based upon the record show, if proper conclusions of law are drawn thereon, that the acts of the defendants violate the Sherman Anti-Trust Law as a combination and conspiracy to control and dictate marketing and distribution methods, control price, to prevent persons from engaging in the milk business in Chicago, Illinois, except upon dictated conditions, and to effect and perpetuate a monopoly in direct restraint of interstate commerce. Further that the acts of violence, boycott, picketing and all other acts committed were frequently intermingled and inseparable, and in any case are enjoinable as all were merely part of the means and technique employed to carry out an illegal conspiracy and achieve an illegal end.

The defendants contend that their acts are permissible; that their purpose is only to unionize an industry and as such is granted immunity under the Norris-La Guardia Act.

SUMMARY OF ARGUMENT.

I.

The defendants' activities constitute a violation of the Sherman Anti-Trust Act.

A.

The activities of the defendants are directed at the control of price, suppression of competition in marketing methods, and the prevention of persons engaging in business enterprise, except upon terms dictated by the defendants, and are *per se* in restraint of trade.

B.

The activities of the defendants directly restrain interstate commerce according to the standards applicable in Anti-Trust cases.

II.

No labor dispute as defined by the terms of the Norris-La Guardia Act is present.

A.

The record fails to show the existence of a bona fide dispute concerning terms or conditions of employment, but on the contrary show that the purposes and ends to be accomplished by the defendants are wholly outside of the area of permissible labor activity.

B.

Efforts to control price and marketing methods can not constitute a labor dispute.

III.

The right to freedom of speech does not grant immunity to picketing done pursuant to a purpose not within the permissible area of labor activities.

IV.

Unless protected by injunction restraining the defendants from preventing the sale of cash and carry milk and preventing the distribution of milk by the "vendor system", the plaintiffs will be denied the equal protection of the law and other privileges and immunities guaranteed to them under the Constitution of the United States.

ARGUMENT.

I.

DEFENDANTS' ACTIVITIES CONSTITUTE A VIOLATION OF THE SHERMAN ANTI-TRUST ACT BY THE PRINCIPLES DETERMINED BY THE CASE OF APEX HOSIERY CO. v. LEADER, 84 L. ed. 913.

A.

The defendants' activities are per se an unreasonable restraint.

The plaintiffs urge that the record shows defendants' acts fall within those activities condemned by the principles of the case of *Apex Hosiery* v. *Leader*, 84 L. ed. 913. That case while holding labor unions not exempt under the anti-trust laws, defines the nature and extent of applicability, and exempts normal and legitimate union activities. The plaintiffs confine their arguments to the very special facts which distinguish this case from the facts present in the *Apex* case. In that case although the acts were unlawful, they did not contain the elements of restraint of trade. Plaintiffs will argue that the defendants' acts were essentially of restraint; were directed at "suppression of competition in the marketing methods", the control of price, and the prevention of persons engaging in business enterprise except upon terms dictated by the defendants. Specifically that the defendants' program was to prevent persons from distributing milk in the City of Chicago by sale in cash and carry stores, and to prevent the sale of milk at any price lower than that prevailing for milk delivered to the doorstep of the retail consumer.

The plaintiffs do not argue, as the defendants would have this Court believe, that efforts to organize an entire industry, or efforts to increase wages or benefit workers which in turn may *incidently* raise the consumers' price, is a violation of the Sherman Act. Such arguments were never considered or presented by the plaintiffs, and were injected into the case now for the first time by the defendants.

The defendants by using accepted and not to be controverted legal generalities, such as that of the protection afforded to the legitimate efforts of labor unions to organize under the Norris-LaGuardia Act, the sanctity of the right to free speech, and the like, seek an easy classification of their activities under headings which would make the position of the plaintiffs appear to be an attack upon these broad principles. Nothing could be further from the actual case. The record presents no such simple set of facts as would permit the defendants' acts to fall within these broad and unquestioned principles. The plaintiffs feel that the facts shown by the record present a case upon the facts, quite different from those cases held to involve a "labor dispute" as determined by this Court in *Lauf* v. *Schinner & Co.*, 303 U. S. 323; *Senn* v. *Tile Layers' Union*, 301 U. S. 468, and *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552.

Control of Price and Not Unionization Is Defendants' Real Purpose.

The findings of the District Court indicate the unusual nature of the facts present. The District Court in its findings of fact made all of the findings necessary to show that the real purpose of the defendants was to prevent the sale of cut-rate milk. Nowhere does the District Court, or even the Master in Chancery in his very lengthy report, find any actual issue concerning wages, hours, terms

or conditions of employment, or questions of representation.

The District Court specifically found that the plaintiff dairy by employing the cash and carry method of distribution, was able to sell its milk at lower prices; (please see statement of facts herein) that the picketing and violence has taken place only at the independently owned retail stores selling the products of the plaintiff dairy; that the defendant union represents all men distributing milk in Chicago except those of the few cut-rate dairies (R. 249). The defendants' witnesses testified that they were opposed to the *vendor system of distribution* and some admitted opposition to the sale of cut-rate milk (R. 103-105, 112, 91, 92, 94, 95, 98, 99, 100). Neither the Master nor the District Court made any specific finding of fact indicating that the activities of the defendants were in an effort to organize.

From the premises that it is a normal union activity to organize an entire industry, the defendants further argue that efforts to better working conditions, even if consumers' prices are raised, is not a violation of the Sherman Act. Plaintiffs agree with these arguments, but these premises are purely hypothetical and do not find their basis in any facts in the record of this case. Here there are no efforts to organize an entire industry, but rather the positive refusal of the defendant union to accept dairies which distribute cut-rate milk (R. 125). Despite their better working conditions, higher wages and better hours, and until represented by the plaintiff union, the vendors were afforded no collective representative. This is a case where a union stepped entirely out of the area of normal labor activities into *direct* efforts to control marketing, and regulate price. The defendants' statements as to the economic and social necessity for greater protection to the rights of labor unions can create no issue in this case.

The record shows a labor union which for almost forty years has represented all Chicago milk drivers and which to preserve and perpetuate its control, seeks to prevent the sale of cash and carry milk, which has been demonstrated to be a more modern, and efficient method of milk distribution. The defendants seek to weigh their personal self-interest against the right to more progressive marketing methods and in effect contend that they have the right to dictate the terms, methods, and conditions upon which persons may engage in the milk business. Such purposes are illegal, regardless of the class of the persons who seek to bring them about.

Apex Hosiery v. *Leader*, 84 L. ed. 913, 929.

United States of America v. *The Borden Co.*, 308 U. S. 188.

Interstate Circuit, Inc. v. *United States*, 306 U. S. 208.

Local 167, I. B. T. v. *United States*, 291 U. S. 293.

Bedford Cut Stone Co. v. *Stone Cutters' Association*, 274 U. S. 37.

Industrial Association v. *United States*, 268 U. S. 64.

United Leather Workers v. *Herkert*, 265 U. S. 457, 471.

Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.

Loewe v. *Lawlor*, 208 U. S. 274.

Montague & Co. v. *Lowry*, 193 U. S. 38.

Also please see Statement of Assistant Attorney General Thurman Arnold of November 20, 1939, entitled "Application of the Anti-Trust Laws to Labor Unions", wherein activities by labor unions outside the legitimate field of labor interest and partaking of efforts to control marketing methods are condemned.

Commerce Clearing House, Labor Law Service, Third Edition, Sec. 535.

Efforts by a labor union to suppress competition in marketing methods fall into the same classification of illegality as non-labor cases.

Apex Hosiery v. *Leader*, 84 L. ed. 913, 929, citing:
Montague v. *Lowry*, 193 U. S. 38.
Paramount Famous Lasky Co. v. *United States*, 282 U. S. 330.
United States v. *First National Pictures*, 282 U. S. 44.
Eastern States Lumber Dealers Ass'n. v. *United States*, 234 U. S. 600.

The defendants misinterpret the decision of the Circuit Court of Appeals in saying that unionization of all milk wagon drivers in the City of Chicago could *of itself* constitute a violation of the Sherman Act. The Circuit Court of Appeals inquired into the nature of the end to be accomplished and determined that the only interest of the defendants was to prevent the sale of cut-rate milk, and that there was no effort at unionization or no possibility of the same. After having so determined that Court held that the findings of the District Court and the record indicated that the elements of monopoly and restraint were present (R. 368).

The Ends Sought Must Justify the Means Employed.

Although much has been added to the substance of labor law both by legislation and judicial determination, since the cases of *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, and *Bedord Cut Stone Co.* v. *Journeymen Stone Cutters' Association*, 274 U. S. 37, as to the permissible area and extent of labor dispute, according to the present expressions of the law, the inquiry into the *nature* of the ends compelling labor union activities take on new and added importance. Since only certain and now clearly

efined types of extraordinary activities of unions appear
o violate the anti-trust laws the nature of the ends and
urposes of acts committed, require more consideration
han ever. Whether the majority or minority decisions
n these earlier cases is right as to whether the acts were
ermissible, as justified by the end sought, need not be
rgued. The principle transcending these cases is that
he Court must in all cases carefully inquire into the na-
ure of the purpose to determine if it is a purpose which
ay lawfully be indulged in by a labor union.

Apex Hosiery v. *Leader,* 84 L. ed. 913, 931.
Restatement of the Law of Torts, Section 775, page 98.
Frankfurter & Greene: "The Labor Injunction", page 25.

In all cases the thing to be guarded against is the pur-
ose *per se* illegal in the guise of a labor dispute. Iden-
ical acts, some, of themselves, lawful and others illegal,
ay be the instruments of effecting either a legitimate
r an unlawful purpose. In the *Apex* case, *supra,* this
ourt stated that the union's purpose was to organize the
actory. A strike of employees was involved and the pur-
oses were entirely lawful, and clearly without the field
f *per se* restraints of trade. The defendants here seek to
nject the question of hours, wages and working conditions
t page twenty-two of their brief, but since their object
s not unionization, these issues are not involved. Evi-
ence was not introduced by the defendants on these points,
nd the Master in Chancery and the District Court made
o findings, to support this contention. The statement
hat the members of the defendant union have bettered
heir working conditions since 1902 may be answered by
bserving that the conditions of all workers have been
ettered during that period. If the defendants are per-
nitted to prevent the sale of cash and carry milk, it is

conceivable that by preventing the millions of persons living in Chicago from obtaining milk at a low price, the defendant union may enjoy further benefits.

The Ends Sought By the Defendants Are Unlawful Per Se.

This case is not that of an effort to better working standards by unionization which might as an incident cause the sales' price of the commodity to increase. It is rather the direct effort of a union to control the distribution price of a commodity. The District Court found that the *method* of distribution was the justification for the lower sales price. The efforts of the defendant union to so control price must be considered by the same standards as the efforts of non-labor groups. Combinations to control price are *per se* illegal.

United States v. *Socony-Vacuum Oil Co.*, 84 L. ed. 760.

United States v. *Trenton Potteries*, 273 U. S. 392.

Interstate Circuit v. *United States*, 306 U. S. 208.

Although the determining standards of what is an illegal purpose, have varied with industrial and social progress, this Court has always held that if illegality of purpose is first shown, the resulting restraint is unlawful and relief may be had.

Apex Hosiery v. *Leader*, 84 L. ed. 913, at page 927, citing: *Local 167, I. B. T.* v. *United States*, 291, U. S. 293; *United States* v. *Brims*, 272 U. S. 549.

Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.

Eastern States Retail Lumber Dealers' Association v. *United States*, 234 U. S. 600.

Loewe v. *Lawlor*, 208 U. S. 274.

The Nature of the Defendants' Activities Prove An Unlawful Intent.

The defendants urge that the record does not indicate a specific intent on their part to violate the Sherman Act. If the acts of the defendants in the present case constitute a combination and conspiracy containing the elements of a restraint *per se,* and if the effect of such combination is to actually restrain the flow of commerce, no specific intent need be shown to have existed in the minds of the defendants to restrain Interstate Commerce. The defendants are charged with the intent to perform the natural consequences of their deliberate acts.

Apex Hosiery v. *Leader,* 84 L. ed. 913, 917.
Interstate Circuit v. *United States,* 306 U. S. 208.
United States v. *Brims,* 272 U. S. 549.
Eastern States Lumber Association v. *United States,* 234 U. S. 614.

All Means Used Are Rendered Unlawful by the Illegality of Purpose.

This Court has determined that where the purpose is first established to be unlawful that all means of accomplishing such purpose, even those otherwise innocent, are condemned. Although the question as to what constitutes an illegal purpose must first be determined according to varying standards of applicable legislation, and social and economic progress, if once established, all means fail with the purpose. Rights and guarantees are at all times limited to the paramount interests of society and the exigencies of the state as determined by its legislative policy. The claimed rights of the defendants may not be exercised by them in complete disregard of the purposes and uses to which they are put.

Duplex Printing Press Co. v. *Deering,* 254 U. S. 443.

Gompers v. *Buck's Stove & Range Co.*, 221 U. S. 418.

Eastern States Retail Lumber Dealers' Association v. *United States*, 234 U. S. 522.

American Steel Foundries v. *Tri-City Trades Council*, 257 U. S. 184.

Scavenger Service Corporation v. *Courtney*, 85 F. (2d) 825.

Since all means of carrying out an illegal purpose may be enjoined, the question of the separability of lawful from unlawful means, raised by the defendants, should not be involved. Even if there were some basis in the cases, for the argument that lawful means, if separable from unlawful, are immune, the record shows that all means employed were but the interlocking techniques of one program. Picketing, bombing, burning, shooting, and the other means all dovetail into the plan of action concurrently imposed by the defendants. The plaintiffs feel, however, that even if the means used may be factually or legally separable, that if the purpose has all of the elements of a common law restraint and also burdens interstate commerce, that all means may be enjoined. Hereinafter under the subject of freedom of speech, the plaintiffs urge the contention that no such thing as peaceful picketing can exist without the presence of a bona fide labor dispute. So with every other means used. If those elements are not present which indicate a legitimate purpose, the act is based upon fraud and is unlawful from its inception.

If the purpose is shown to be unlawful and all means therefore subject to injunction, the question of the illegality of the secondary boycott is not necessarily involved. In most states, including the state of Illinois, the sec-

dary boycott appears to be unlawful regardless of interts of the participants:

Schuster v. *International Association of Machinists*, 293 Ill. App. 177.

Wilson v. *Hey*, 232 Ill. 389.

Carpenters Union v. *Citizens Committee*, 333 Ill. 225.

Anderson Lind Manufacturing Co. v. *Carpenters Unions*, 308 Ill. 488.

Kemp v. *Division*, 241, 255 Ill. 213.

Barnes v. *Typographical Union*, 232 Ill. 424.

Fenske Bros. v. *Upholsterers Union*, 358 Ill. 239.

The Circuit Court of Appeals for the Seventh Circuit as held similarly:

Scavenger Service Corporation v. *Courtney*, 85 F. (2d) 825.

This Court has been most careful to distinguish upon the acts, recent labor cases from earlier cases which have etermined the secondary boycott to be illegal. In the ase of *Senn* v. *Tile Layers' Union*, 301 U. S. 408, this ourt said:

> "The sole purpose of picketing was to acquaint the public with the facts and by gaining its support to induce Senn to unionize his shop" (page 480).

his Court in the *Apex* case, the *Senn* case and other recent ases, by showing the presence of a lawful purpose, has istinguished these cases from the cases holding the secndary boycott to be unlawful, such as:

Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.

Lawlor v. *Loewe*, 235 U. S. 522.

Gompers v. *Buck Stove & Range Co.*, 221 U. S. 418.

In this case we are not considering isolated acts apart from their purpose or motives and then concluding that these isolated facts constitute a secondary boycott illegal in every instance. Rather, we are considering a general purpose and objective which is sought to be accomplished by means which include, among others, the technique known as the "secondary boycott." The plaintiffs urge that if this question is to be considered, that it be dealt with in the light of the purpose and nature of the combination. That the nature of the background, field of activity, and purpose are to be considered, is shown by this Court in the *Apex* case, *supra*, at page 929, Law Ed., where this Court questioned into purposes of the activities in the earlier boycott cases.

Self-Interest Does Not Justify the Defendants' Activities.

The defendants seek to justify their acts, but fail to establish any justification except that of self-interest. The entire standard for determining the validity of acts to promote a labor union's self-interest rests upon and emphasizes the issue of justifiable ends. Self-interest may be asserted only in ways which have a direct relation to benefits that the workers are trying to obtain. This amounts to saying that under a claim of self-interest or benefit, a labor union may not go beyond the sphere of normal and legitimate labor activities. For example, it may not, under the guise of self-interest, seek to prevent more efficient, modern and forward looking methods of marketing and distribution. That self-benefits does not justify restraint of trade has frequently been determined by this Court:

Interstate Circuit v. *United States*, 306 U. S. 208.

Eastern States Lumber Dealers Ass'n v. *United States*, 234 U. S. 600.

Anderson v. *Shipowners Association*, 272 U. S. 359.

Bedford Cut Stone Co. v. *Journeymen Stone-cutters,* 274 U. S. 37.
United States v. *Brims,* 272 U. S. 549.

The record in the present case presents the question of whether the defendant union in order to perpetuate and benefit itself in its method of retail doorstep delivery, may be permitted to prevent the sale of cash and carry milk. The fact that the defendant union represents all dairies in Chicago, except the five or six cash and carry dairies, and with the elimination of this group, would represent all of the distributors must be kept in mind. The defendants have a monopoly well worth securing and they attempt to justify their activities on the ground that the union would be benefited. Not all benefits to a union constitute a legitimate labor dispute.

Since the defendants do not deny the existence of a secondary boycott, the burden rests upon them of showing a lawful purpose and a justifiable end to give validity to this or any other means used. While it is true that the standards whereby courts are to determine as to what constitutes "justifiable ends," have grown with social and economic progress, and with legislative declaration of policy, the defendants have failed to cite any cases by this Court holding the secondary boycott to be a valid technique in cases of this kind.

Frankfurter & Greene: "The Labor Injunction," page 25, etc.

Distinguishing Certain of Defendants' Cases and Arguments.

In answer to cases cited by defendants at page nineteen of their brief as to the separability of violence from peaceful picketing, an examination of the cases there cited shows that in all of these cases the purpose and motive was law-

ful—the motive was of legitimate union concern. Since only the *means* were unlawful, they were, if separable, not enjoinable. The very decisions cited clearly point out this distinction. In *Wise Shoe Co.* v. *Lowenthal,* 266 N. Y. 264, 194 N. E. 749, and *May's Furs* v. *Bauer,* 282 N. Y. 331, 26 N. E. (2d) 279, the picketing was to unionize retail stores. The illegality was merely "noise and shouting" (page 750). In *Baillis* v. *Fuchs,* 283 N. Y. 133, 27 N. E. (2d) 812, *Fenske Bros.* v. *Upholsterers' Union,* 358 Ill. 239, *American Steel Foundries* v. *Tri City Trade Council,* 257 U. S. 184, and *Iron Molders' Union* v. *Allis Chalmers Co.,* 166 Fed. 45, strikes were involved. In none of these cases was there even a claim of efforts at market or price control, or any other element of restraint. The reference to Restatement of the Law of Torts, Sections 815 and 816 is in error. At section 816, it is indicated that non-tortious acts may be enjoined. Similarly, sections 806 and 814.

In order to appear sympathetic with recent legislative policy and judicial principle, the defendants have asserted that their view is more realistic in the light of present economic and social problems. This self-evaluation by the defendants is immediately defeated when it is remembered that the method of distribution they champion is the old unit system of delivering a bottle at a time, such as prevailed in the early days of primitive distribution methods, while the plaintiffs' system is the newer, low-priced volume method of distribution, brought about in the interest of more efficient methods and attendant saving to the public. This cash and carry system is relatively new and is performed by only a very small group of Chicago dairies. It is this *method* of volume distribution to the cash and carry stores that is the reason for the lower prices. The pretense of an attempt to organize is the thinnest sort of disguise. The record shows that all acts were directed

at the suppression of this method of distribution and at the control of price and nothing more. Such a purpose is exactly the type of purpose which is illegal under the clearly defined class of activities by a labor union that may constitute a violation of the anti-trust laws.

B.

Interstate commerce is directly restrained.

If the purpose and end of the conspiracy and combination, contains the elements which are considered to be a restraint *per se*, the only question that remains to be determined is whether interstate commerce is involved. If the combination falls within the proscribed classification, and interstate commerce is affected, the cases held that the nature of the combination creates a direct restraint.

Apex Hosiery v. *Leader*, 84 L. ed. 913.
Interstate Circuit, Inc. v. *United States*, 305 U. S. 28.
Local 167, I. B. T. v. *United States*, 291 U. S. 293.
Bedford Cut Stone Co. v. *Stone Cutters Association*, 274 U. S. 37.
Industrial Association v. *United States*, 268 U. S. 64.
Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.
Loewe v. *Lawlor*, 208 U. S. 274.
Montague & Co. v. *Lowry*, 193 U. S. 38.

In cases where these unlawful elements of restraint are present, the restraint upon interstate commerce cannot be a reasonable one.

From the Master's Report, it is clear that he confused the tests to be applied to determine if interstate commerce had been restrained. The Master spoke of the milk as "coming to rest" after reaching the State of Illinois and of the "stream of commerce" having ceased to flow at the time the milk reached the dairy. Having once reached this

conclusion, it was easy and natural for him to conclude that the Anti-Trust Laws had not been violated. That the "stream of Commerce" test is only to be used in limited instances, *i. e.*, in tax cases, was clearly indicated by this Court in the case of *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation,* 301 U. S. 1. In anti-trust cases, the test of whether interstate commerce is burdened, is always as to the *effect* of the acts upon interstate commerce and never as to the point at which the interference took place, or if the goods had come to rest or had ceased to flow in the stream of interstate commerce.

Bedford Cut Stone Co. v. *Journeymen Stonecutters' Ass'n,* 274 U. S. 37.

Montague & Company v. *Lowry,* 193 U. S. 38.

Local 167, I. B. T. v. *United States,* 291 U. S. 293.

Factually, there can be no question but that there is an actual physical flow of milk in interstate commerce into the City of Chicago, and from the proof in the case this flow is uninterrupted from the farm receiving station, through the Chicago dairy and into the retail cut-rate store. In consonance with this uninterrupted "factual current," the authorities hold that as a matter of law the interference with the orderly distribution of milk in Chicago in the manner committed by the defendants, burdens and restrains this flow.

The District Court made the following findings of fact pertinent to the question of the relationship of the defendants' acts to Interstate Commerce:

> "The plaintiff, Lake Valley Farm Products conducts a milk pasteurizing plant in the City of Chicago, Illinois, and purchases its daily fluid milk requirements from the plaintiff, Lake View Cooperative of Watertown, Wisconsin, which in turn receives such milk from surrounding farmers, residents of the State of Wisconsin; that the milk is transported by motor truck to the Chicago, Illinois plant where it is pasteurized,

bottled and sold to 'vendor' distributors who deliver the product to various milk stores (Finding 'Third' R. 248).

That about 40% of all milk sold as fluid milk and about 75% of all milk separated and sold as cream in Chicago, comes from milk produced outside of the State of Illinois; that foreign and local milk is commingled, sold in competition with and is indistinguishable each from the other; that pasteurization requires only about one-half hour and nothing is added to or taken from the milk in such process and that only a few hours separate the receipt of the bottled milk at the retail store from its point of origin in the State of Wisconsin (Finding 'Eighth' 9. 249)."

The contention of the defendants that their activities were of a local nature is of no validity. What they mean is that the overt acts were committed within the State of Illinois. Numerous decisions of this Court have determined that local transactions may burden and restrain interstate commerce because of the relationship of such acts to interstate commerce. In the case of *Local 167 I. B. T.* v. *United States,* 291 U. S. 293, this Court said:

"But we need not decide when interstate commerce ends and that which is intra-state begins. The control of the handling, the sales and the prices, at the place of origin before the interstate journey begins, or in the state of destination, where the interstate movement ends, may operate directly to restrain and monopolize interstate commerce."

Cases similarly holding are:

United States v. *Rock Royal Cooperative,* 307 U. S. 533.

National Labor Relations Board v. *Jones & Laughlin Steel Corporation,* 301 U. S. 1.

Baldwin v. *Seelig,* 294 U. S. 511.

National Labor Relations Board v. *Fainblatt*, 306 U. S. 601.

Santa Cruz Packing Co. v. *National Labor Relations Board*, 303 U. S. 453.

Similar decisions have been rendered by this Court as to the intermingling of local transactions with interstate commerce in the cases of:

Consolidated Edison Company v. *National Labor Relations Board*, 305 U. S. 197.

Currin v. *Wallace*, 306 U. S. 1.

Mulford v. *Smith*, 307 U. S. 38.

Nebbia v. *New York*, 291 U. S. 502.

This Court has determined that acts of themselves local may constitute violations of the Anti-Trust Laws, and will be enjoined whenever necessary for the protection of interstate commerce against restraints:

Local 167, I. B. T. v. *United States*, 291 U. S. 293.

Loewe v. *Lawlor*, 208 U. S. 274.

Eastern States Lumber Dealers Association v. *United States*, 234 U. S. 614.

Bedford Cut Stone Co. v. *Journeymen Stone Cutters' Association*, 274 U. S. 37.

Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.

The argument made by defendants that even if the plaintiff dairy was put out of business that others will sell milk and that the plaintiffs have not shown that the total of all milk coming into the state would be diminished, is improperly conceived. Size has never been the determining factor in determining the question of relationship to interstate commerce, and the plaintiffs need not prove that the public would be unable to get milk.

National Labor Relations Board v. *Fainblatt*, 306 U. S. 601, 606.

Apex Hosiery v. *Leader*, 84 L. ed. 913, 917.

II.

HE RECORD FAILS TO PRESENT A CASE OF "LABOR DISPUTE" AS DEFINED BY THE NORRIS-LA GUARDIA ACT.

Since the defendants urge that the provisions of the orris-LaGuardia Act grant them immunity, they have ie burden of first showing that a labor dispute, as defined that Act exists, and second, that if a labor dispute does ist, that the Act does, in fact, grant such immunity.

The Clayton Act, Section 6, was intended to eliminate ie application of the Anti-Trust Laws to the legitimate tivities of labor unions. The courts were thereby called on to determine the terms and limits of "legitimate objects" as used in the Act. This was done according to the en existing precedents and the philosophies of the Courts. illegality of purpose was first determined, the Clayton ct could not be claimed as an exemption.

Duplex Printing Press Co. v. *Deering,* 254 U. S. 443.
Bedford Cut Stone Co. v. *Stone Cutters Association,* 274 U. S. 37.
United States v. *Brims,* 272 U. S. 549.
Coronado Co. v. *United Mine Workers,* 268 U. S. 295.

Meeting broadening concepts of the field of labor activy, the Norris-LaGuardia Act widened the area within hich protection is granted to the activities of labor unions. he Act had no effect upon acts committed by a labor union hich are not union activities, but which are unlawful egardless of the class of persons who perform them. ven a further broadening of the definition of *labor dispute* ould leave out the performance of the defendants in this ase. Their acts differ in nature and not in degree. The laintiffs do not and are not compelled to oppose legitimate

or normal union objectives. The plaintiffs do not argue that such normal objectives are unlawful because they burden or restrain interstate commerce. Rather the plaintiffs ask relief against acts which are unlawful of themselves, and are not rendered lawful by the mere circumstances that the persons committing them happen to be labor union officials. Neither of these statutes was intended to grant immunity to unions if they stepped beyond such normal and legitimate activities and attempted purposes and committed acts illegal, regardless of by whom committed. This legislation left great latitude to the courts, and Congress has passed no law exempting labor unions from the terms of the Anti-Trust laws. This Court in the *National Labor Relations Cases,* 301 U. S. 1, stated at page 31:

> "It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of congressional power. Acts having that effect are not rendered immune because they grow out of a labor dispute."

Also:

> *Virginia Railway Co.* v. *System Federation,* 300 U. S. 515.
>
> *Apex Hosiery* v. *Leader,* 84 L. ed. 913, 919.

No Labor Issue Is Involved.

The burden rests upon the defendants to show that all of the elements made necessary to constitute a labor dispute as defined by the Norris-LaGuardia Act are present. Subsections (a) and (c) of Section 113 of that Act provide as follows:

> "A case shall be held to involve or grow out of a labor dispute when the case involves persons who are engaged in the same industry, craft or occupation; or have direct or indirect interests therein; * * *"

Section 113 (c) of the same Act provides:

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

In order to constitute a labor dispute, there must first be a real, factual dispute concerning the specific types of matters covered by sub-section (c). Sub-section (a), while adding to the classes of persons who may be parties to a labor dispute, does not eliminate the necessity for there being a real issue as to the terms and conditions of labor or to matters of representation.

The District Court found that the "vendors" were independent business persons and not employees of the dairy (R. 248). That the defendant union is a craft union for drivers who are *employees* of dairies only is further shown by their contract form with dairies (R. 147-154) which does not refer to and could not possibly govern vendors; the sworn answer of defendants indicating vendors are not acceptable to membership (R. 53); the testimony of the officers of the defendant union (R. 107, 109, 112). The vendors have chosen their own union: there are no persons capable of unionization.

Nor do the defendants show what the claimed dispute is about. The defendants advance such arguments as that a labor dispute need not be limited to employer and employee; that efforts to raise wages and living standards, to unionize a whole industry, and the like, but fail to show a record involving any of these questions. They fail to show a dispute as to the terms or conditions of employment. At most the defendants have shown that all parties to this case are in the milk business and therefore belong to the class in which a dispute might be possible.

The Defendants' Purpose Is Outside the Field of Permissible Activity.

This Court must determine into the purposes of the defendants' acts and all the surrounding circumstance. The mere fact that all are in the same craft and that the acts are committed by a labor union does not prove that a "labor dispute" is involved.

Scavenger Service Corp. v. *Courtney,* 85 F. (2d) 825 (C.C.A. 7, 1936).

Mayo v. *Dean,* 82 F. (2d) 554 (C.C.A. 5; (1936).

Waterfront Employers, et al, v. *C. I. O.* (D.C. Ore.; 1938) 1 Labor Cases 386.

Fehr Baking Co. v. *Bakers' Union,* 20 F. Supp. 691 (D. C. La.; 1937).

also:

Thompson v. *Voekhout,* 273 N. Y. 390, 7 N. E. (2d) 674.

as to cases where there are no persons to organize.

The dispute is not over terms or conditions of employment. This is not involved. The dispute is over the right of the plaintiffs to distribute milk at a price lower than that generally prevailing for home-delivered milk, *i.e.,* the right to sell cut-rate cash and carry milk. The vendor is required to make on an average of only ten stops each day, and is able to distribute more than five times as much milk as on a retail route in a shorter time with a higher net income to himself and under better working conditions. The District Court found that it was the *method* of distribution and not wages or any other element that made a lower sale price possible. The plaintiffs feel that this is the crux of the entire case and explains all of the acts of the defendants. The pretended opposition to the vendors is actually opposition to cut-rate price. A vendor has no inherent advantage over the employed driver. Unless

the milk is distributed in large quantities to cash and carry stores, there is no difference between the two and no inherent comparative advantages or disadvantages.

The fertile field of labor litigation has brought numerous cases to this Court for interpretation and the defendants have drawn from these cases to further their argument that a labor dispute exists as defined by the Norris-LaGuardia Act. None of these cases involved a record where a labor union had sought to control price or dictate the method of market distribution, or to eliminate competition by employing all types of violence together with means ordinarily associated with labor activity.

The Defendants' Purpose to Destroy Plaintiff's Business Cannot be a Labor Dispute.

While the defendants' acts are generally to prevent the entry into the Chicago market of cash and carry cut-rate dairies, as to the plaintiff dairy, it is a conspiracy to ruin its business. A conspiracy to limit this type of competition. The activity of the defendants is applied at the point which it is most effective to destroy business. The record negatives any desire to organize. There is no evidence of the presentation of any proposed representation agreement, demands for recognition, meetings or requests as are present in such cases as *Lauf* v. *Schinner,* 303 U. S. 323, and *New Negro Alliance* v. *Sanitary Grocery Co.,* 303 U. S. 552. Mr. Bryant, secretary of the Defendant Union testified that the defendants' plan of action was successful, although no cut-rate dairy had been organized by the defendant union. Such testimony could only mean that it had been successful in destroying business.

It is to be conceded that labor unions in their efforts to represent workers may by picketing or other means of publicity enlist public opinion to the extent that a company's sales will diminish. This is labor's legitimate and

effective weapon. Because this weapon is so effective, it is the duty of the Court in a case of this kind to carefully determine into the purposes and ends of such publicity to determine that no fraud exists and that these destructive means are justified by proper ends. Unless a labor issue plus an effort to organize or represent is present, the union is fraudulently availing itself of a protection not intended as a cloak for illegal purposes. At the time of the signing of the Norris-LaGuardia Bill, the President of the United States made public the letter of the Attorney General of the United States dated March 23, 1932, giving his opinion as to the effect of the Act upon the Anti-Trust Laws. This letter excluded racketeering and other illegality of purpose, and concluded that the Act did not prevent injunctions in such cases.

This Court in the *Senn* case very carefully stated that the purpose of the picketing was to acquaint the public with the facts of a labor dispute. This can be the only purpose of picketing. There can be no enforcements of a conspiracy as in this case which injured the business of small independent groceries and delicatessens by means of picketing, violence, and the stopping of delivery of other necessary commodities into such stores, without a very careful examination into the real purposes of all of such acts.

The validity of picketing can never be determined by a rule so general that the purpose is to be disregarded. The defendants seek to use the Norris-LaGuardia Act as an immunity and to justify their picketing as a lawful and normal means of labor publicity. They do not claim that their picketing is for any other purpose. If they can not show a labor dispute, no right to picket is claimed or exists. The Anti-Trust laws are laws of broad substantial application treating with rights admittedly broad and general. On the other hand, the Norris-LaGuardia Act is an

t concerning procedure only and an act in limitation of eretofore existing rights. Since this Act creates exceptons to general jurisdiction, the extent of these exceptions ust be defined with precision. That a labor dispute exists ust be determined without question.

The Record and Findings Do Not Establish a Labor Dispute.

In the present case the District Court made no findings f fact as to labor dispute in its conclusions of law, it merely id: "That a labor dispute exists as defined by the terms f the Norris-LaGuardia Act" (R. 250). Neither in the ndings of fact nor in the conclusions of law did the Disict Court indicate the nature or issue of such dispute. uch an absence of findings could not support the decree rdering dismissal. The Master's Report does not supply is want. The great bulk of the Master's Report (R. 03 to 223) is taken up by an analysis of the complaint and nswer and by an improper examination and lengthy quotaons from certain decisions. The Master was not at all ertain on this question, and at page 216 of the record at aragraph 33 said: "Whether or not the facts in the case t bar constitute a 'labor dispute' as contemplated by the rovisions of the above Act is not entirely free from doubt." he Master then proceeds to consider various decisions and nally states that he is of the opinion that the dispute volved brings the present case within the provisions of ne Norris-LaGuardia Act in that it involves persons enaged in the same industry, etc., using the wording of the ct verbatim. The Master makes no finding of any facts pon which a decision that a labor dispute exists could be ased.

The opinion of the Circuit Court of Appeals stated that ney found the record quite convincing that no question f wages or conditions was involved, but that it was quite

conclusive that the vendors distributing plaintiff dairy's milk had a higher income than the defendant drivers. The motions of the plaintiffs to strike portions of the Master's Report and objecting to the same was disregarded, and the objections to the report as against the manifest weight of the evidence was overruled. Nowhere is evidence introduced by the defendants to show that the vendors' working conditions were worse than drivers of the defendant union, but the record contains considerable undisputed testimony of shorter hours, higher income and better working conditions on the part of the plaintiff's vendors (R. 67, 68, 73, 74, 97, 148). The fact that no findings were made, and that the record does not reveal any facts necessary for the finding of a labor dispute, prompted the Circuit Court of Appeals to reach its conclusion that the conspiracy was one to ruin the plaintiff's business.

The 7th Circuit has held that a similar conspiracy to prevent persons from engaging in business was not a labor dispute under the Norris-La Guardia Act, and that all means used to accomplish this purpose were rendered unlawful:

> *Scavenger Service Corporation* v. *Courtney,* 85 F. (2d) 825, 830.

If the acts of the defendants are held to violate the Sherman Anti-Trust Law, these acts cannot contain the elements necessary to constitute a labor dispute as defined by the Norris-La Guardia Act. Violation of the Sherman act presupposes a combination aimed at restraint, monopoly and control. If these elements are present, there can be no labor dispute. The two statutes cannot conflict.

III.

THE RIGHT OF FREEDOM OF SPEECH GRANTS NO IMMUNITY TO THE ACTS OF THE DEFENDANTS.

The Defendants Fail to Define Their Claimed Right.

The defendants' arguments concerning free speech fail to clearly define the source and extent of the claimed right. In their Petition for Certiorari, at page 46, they contend that the due process clause of the Fourteenth Amendment to the Constitution of the United States prevents the issuance of injunction. They proceed to cite various authorities, all of which construe the validity of that amendment. The Fourteenth Amendment refers only to acts by the States, and even with the very broadest interpretation could not possibly refer to acts by any branch of the Federal Government. The defendants then must base their claimed right elsewhere. Guaranties against federal encroachment are found in the first ten amendments to the Constitution. Of these, only the first specifically mentions freedom of speech, and this amendment refers only to Acts of Congress. The Fifth Amendment providing that a person may not be deprived of life, liberty or property without due process of law does not appear to have been invoked by these defendants. The defendants have failed to indicate a single case of this Court construing the Fifth Amendment as protective of their claimed activities or in any other way supporting their contention of immunity.

The case of *Brinkerhof* v. *Hill,* 181 U. S. 673 referred to by the defendants at page 48 of their Petition for Certiorari, as holding that the guarantee of freedom of speech extends to judicial acts, upon examination reveals that the case refers purely to *procedural methods,* to wit: the right to appear in one's own defense. The case does not refer to the denial by a court of substantive rights existing out-

side of court procedure. In the present case, defendants do not claim that they were denied a chance to present their defense.

The Nature of the Dispute Must Be Determined.

If, however, and for the sake of this argument, it is conceded that the claimed right to free speech exists, it becomes necessary to determine into the nature and extent of this right. Any Constitutional right, no matter how broad, must have limitations and conditions of applicability. In the recent case of *Thornhill* v. *Alabama*, 84 L. ed. 659, 664, this Court held the state statute invalid and commented on the fact that the law failed to take into consideration (among other elements) the *nature* of the dispute or the means employed, and at page 667, this Court there said:

> "It is true that the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist."

The footnote at that point in the above decisions refers to the following cases:

Senn v. *Tile Layers Union*, 301 U. S. 468.
Ethel Gas Corp. v. *United States*, Oct. '39 term, N. 536, 60 S. Ct. 618.
National Labor Relations Board v. *Newport News Ship Bldg. & Dry Dock Co.*, 308 U. S. 241.
West Coast Hotel Co. v. *Parrish*, 300 U. S. 379.
Nebbia v. *New York*, 291 U. S. 502.
Dorchy v. *Kansas*, 272 U. S. 306.
Eastern States Retail Lumber Dealers Ass'n v. *United States*, 234 U. S. 600.
Aikens v. *Wisconsin*, 195 U. S. 194.
Holden v. *Hardy*, 169 U. S. 366.

Picketing By a Labor Union Must Be For a Lawful Purpose.

The defendants would ask this Court to adjudicate that their right to picket be granted immunity without an inquiry into the nature of such right or into the means used. In other words, the defendants ask that these rights should be granted without consideration of the rights of society or of social needs and demands. Specifically in the present case, without considering the right of the members of the public to pick up their milk needs at cash and carry stores free from violence, intimidation and threat. The plaintiffs ask no such general grant of immunity to their rights, which they feel equally as important. The Plaintiff dairy's right to conduct its own business, the vendors' right to select their own representatives for collective bargaining, and the public's right to go unmolested upon the city streets. The plaintiffs ask that the claims and purposes of both sides be inquired into.

In any other conclusion, there is great danger that democratic prerogatives may be subverted into dangerous and unintended uses. In the very recent case of *Minersville School District* v. *Gobitis,* 84 L. ed. 993, Justice Frankfurter, in the opinion at page 995, said as to danger inherent in too general an interpretation of the right of freedom of religion: "To state the problem, is to recall the truth that no single principle can answer all of life's complexities."

Plaintiffs urge that no single principle can be as broad as the defendants claim freedom of speech to be. Inquiry must be made into the purpose to which such right is being put and into the means whereby such right is sought to be enforced. Unless a limitation is placed upon the right to free speech, even in cases of a claimed labor dispute, the very purposes for which these rights were granted would be the cause of our undoing.

The view urged by the plaintiffs presents no danger or threat of unjust curtailment. This is not a case of previous restraint such as by a required license to speak as condemned by this Court recently in the case of *Hague* v. *Committee for Industrial Organization,* 307 U. S. 496 or *Schneider* v. *Irvington,* 303 U. S. 471, and in other cases. Here there has been a full and lengthy Court hearing. The picketing is not prospective and the questions of restraint of trade have first been determined.

The right to picket is not an ordinary right of free speech. It is more than a mere voicing of opinion. It connotes that various issues are present without which this peculiar technique is not to be justified. The act immediately identifies itself as an evidence of that struggle between industry and labor which concerns itself with wages or terms and conditions of employments. It is not the spontaneous utterance of the moment, but is rather an act done in furtherance of a program and purpose to achieve a preconceived objective. Picketing is not merely to inform; it is to cause to act. Picketing connotes then that there are present those elements which by legislative standards, we now say constitute a "labor dispute", or create a situation held to arise out of a labor dispute. The right to picket does not exist in a vacuum but always in relation to the existence of those elements which necessarily call it into being and without which the right does not exist. The right is limited to a showing of legality of purpose. The right is an not absolute license to speak, but is qualified by these reservations.

Schaefer v. *United States,* 251 U. S. 466.
Forhwerk v. *United States,* 249 U. S. 204.
Whitney v. *California,* 274 U. S. 357.

That the right of freedom of speech does not extend to the protection of utterances pursuant to illegal purpose is adequately shown by this Court in:

Aikens v. *Wisconsin,* 195 U. S. 194, 206.

Gompers v. *Buck's Stove & Range Co.*, 221 U. S. 418, 437.
Near v. *Minnesota*, 283 U. S. 697.
Dorchy v. *Kansas*, 272 U. S. 306.
Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.

In the present case, the record indicates that none of e elements necessary for the existence of a labor dispute e present, but shows a conspiracy to step beyond legiti-ate union activity into the fields of price control, monop-y, suppression and distribution control. The acts of e defendants are of the very type expressly condemned this Court in the *Apex* case, *supra*.

In the case of *Senn* v. *Tile Layers' Protective Union*, 1 U. S. 468, this Court carefully exempted cases involv-g the element of fraud in construing the Wisconsin bor Law. Such a conclusion indicates that it is neces-ry to determine if the acts are picketing *in fact*, or erely an effort to accomplish unlawful ends by pretense d fraud. If the latter is the case, the Court may well ld that it is not the mere carrying of a banner that nstitutes picketing, but it is the presence of a normal d legitimate cause that meets the definition of the rm.

Restatement of the Law of Torts, Section 775, page 98.

Just as the Norris-LaGuardia Act determined the legis-ive policy to be that acts involving fraud and violence e not immune from injunction, so must the Court deter-ne its judicial policy, and it can well be held that if e purpose is not normal and legitimate, and if the eans are fraudulent, that the acts do not constitute keting as defined by the applicable legal standards. is to the end that an illiberal, reactionary and self-in-

terested labor union may not be permitted to prevent new, better and cheaper methods to appear on the market, because courts are unwilling to determine what is behind the purpose of the man carrying the banner.

IV.

THE ONLY RELIEF FOR PLAINTIFFS IS BY INJUNCTION.

The District Court (Finding "Fourteenth", R. 250) found that fifteen to twenty stores ceased distributing products of the plaintiff dairy in the month preceding the filing of the action, and that twenty-five to thirty stores were similarly lost prior to the entry of the decree. That court also found that more than one hundred stores had been picketed and that there is no way to ascertain the number of consumer-patrons lost by the acts of the defendants (R. 250).

The products of the plaintiff dairy are sold by approximately four hundred stores. The record shows that complaints as to acts of violence, were made to the Police Department and to the State's Attorney in every year during the period involved. The stores are too numerous and too widely scattered for police protection against violence. The Police Department would have no authority to prevent picketing, the stopping of deliveries, or to prevent the other acts of the boycott, because many of these acts when separately viewed, are not unlawful. Only a judicial determination that an unlawful conspiracy and combination exists declaring *all* means of effecting the same to be illegal, can give relief to the plaintiffs. Unless the plaintiffs obtain relief by injunction, they will be deprived of the equal protection of the law, and their property and rights will be taken from them, all in violation of the Constitution of the United States of America.

Although the defendants attempt to limit the argument, by confining their contentions principally to picketing, the record indicates that violence and the threat of violence creates an equally important question, and relief against violence is of equal necessity to the plaintiffs.

CONCLUSION.

The purposes and activities of the defendants are not to unionize, and are not the normal and legitimate activities of labor unions. The defendants can not accept the "vendor" distributors as members of their union; there are no persons to organize, and there is no labor dispute. The conspiracy of the defendants is unlawful and all means of accomplishing the same may be enjoined. The combination and conspiracy of the defendants is *per se* an unreasonable restraint of interstate commerce in violation of Sections One and Two of the Sherman Anti-Trust Law.

WHEREFORE, the plaintiffs respectfully pray that the judgment of the Circuit Court of Appeals for the Seventh Circuit should be confirmed and the decree of dismissal of the District Court entered herein be reversed and the cause remanded.

Respectfully submitted,

ARTHUR R. SEELIG,
Attorney for Respondents.

SUPREME COURT OF THE UNITED STATES.

No. 20.—October Term, 1940.

Milk Wagon Drivers' Union, Local No. 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, et al., Petitioners,
vs.
Lake Valley Farm Products, Inc., Amalgamated Dairy Workers, Local Industrial Union No. 819, et al.

On petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[November 18, 1940.]

Mr. Justice Black delivered the opinion of the Court.

This proceeding presents two questions: First, Does there here exist a "labor dispute" within the meaning of the Norris-LaGuardia Act?[1] Second, If there is a "labor dispute", must the jurisdictional prerequisites of the Norris-LaGuardia Act[2] be complied with before injunctive process can be used against a labor union accused of violating the Sherman Anti-Trust Act?[3]

The District Court found that this was a case "involving or growing out of a labor dispute"; that plaintiffs (respondents here) had failed to satisfy the prerequisites of the Norris-LaGuardia Act; and that, accordingly, the court was without jurisdiction to grant either a temporary or a permanent injunction. The Circuit Court of Ap-

[1] 29 U. S. C. §§ 101-115, 47 Stat. 70. The Act defines a labor dispute as follows: "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." 29 U. S. C. § 113(c), 47 Stat. 73.

[2] "No court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act . . . ." 29 U. S. C. § 101, 47 Stat. 70.

[3] 15 U. S. C. §§ 1-7, 26 Stat. 209, as amended. Section 1 provides: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal."

peals reversed, one judge dissenting;[4] it was the opinion of that court that the case did not grow out of a labor dispute, and that even if it had, a federal court would have jurisdiction to enjoin if the Sherman Act had been violated.[5] Because of the importance of these questions, we granted certiorari.[6]

The Norris-LaGuardia Act applies to labor disputes between "persons who are engaged in the same industry, trade, craft or occupation; or have direct or indirect interests therein."[7] Here, all of the parties have "direct or indirect interests" in the production, processing, sale, and distribution of milk. Plaintiffs, who sought the injunction, were four: one was the Chicago local of a C. I. O. union, the Amalgamated Dairy Workers; two were Chicago dairies whose milk was processed and distributed by members of the C. I. O. union;[8] the fourth was a Wisconsin cooperative association which supplied milk to the plaintiff dairies. Defendants were the Chicago local of the A. F. of L. Milk Wagon Drivers' Union, and its officials. The defendant union is a craft organization limiting its membership to milk wagon drivers; the plaintiff union is organized along industrial lines, and its membership consists of all kinds of dairy workers, including inside help, office workers, wagon drivers, helpers, sweepers and janitors.

A brief statement as to the background of the controversy is necessary for a better understanding of the issues. The Chicago local of the A.F. of L. Milk Wagon Drivers' Union was organized in 1902. Since the organization, working conditions of the members have been materially improved; hours have been shortened, wages have been raised, and vacation periods with full pay have been secured. These better terms and conditions of employment have moved concurrently with a more or less steady increase in union membership and influence. At the time this litigation was begun the union had more than five thousand members.

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[4] 108 F. (2d) 436.

[5] There is no diversity of citizenship, and federal jurisdiction, if present at all, exists because of violation of the Sherman Act. The contention that interstate commerce is involved stems from the fact that defendants, in Chicago, picketed retail stores selling milk produced in Wisconsin. In the view we take of the case, we find it unnecessary to pass on this question.

[6] 309 U. S. 649.

[7] 29 U. S. C. § 113(a), 47 Stat. 73.

[8] As to one of these plaintiff dairies, the complaint was voluntarily dismissed.

With the approach and continuance of the depression of the early Thirties, the milk business, like other industries, was in acute distress. Loss of profits from decreased demand stimulated dairies to devise new and cheaper methods to obtain and serve customers. Under the long existing practice in Chicago, dairies had owned milk trucks and wagons, and had operated them with employee drivers—chiefly members of the A.F. of L. local. A major part of the business consisted of door-to-door deliveries to retail customers. Some of the A.F. of L. drivers also delivered milk to retail stores, those stores in turn selling to their customers. What appears to have been an insignificant part of the milk supply of pre-depression Chicago was delivered by retail milk "peddlers" who bought from the dairy at wholesale and sold at retail from their own trucks or wagons. But with the depression this practice of sale by "peddlers" expanded, branched out into sales to retail stores, and developed into what is called the "vendor system"—around which revolves the present controversy. Retail peddling started the controversy; at the root of the conflict, however, is this later emerging "vendor system", under which "vendors" delivered milk at wholesale to retail stores. Under this system, plaintiff dairies make daily sales of milk to individuals owning their own trucks. These individuals, called "vendors", resell the milk to retail stores. Unsold milk is no loss to the "vendor", because the dairy takes it back at the full purchase price.

With the spread of this new competitive system, the business of the dairies employing union milk wagon drivers decreased. Many of the union drivers lost their jobs and were dependent upon their union's relief funds and upon public relief agencies for their support. How many of those who lost their jobs became unemployed as the result of the depression and how many were displaced by the growth of the "vendor system" cannot be determined; both causes undoubtedly contributed.

The stores buying milk from plaintiff dairies through these vendors made a practice of selling it below the standard prices charged for milk supplied by dairies employing A. F. of L. drivers. Defendant union and its members claimed that the reason the price could be cut was that the vendors worked long hours, under unfavorable working conditions, without vacations, and with very low earnings. On the other hand, the vendors and the dairies utilizing their

services asserted that the reason for the lower prices was that the vendor system was more economical, that under it more milk could be delivered by wholesale to the cash and carry cut-rate stores, and that such distribution cost less even on the same wage level than did door-to-door distribution. As the vendor system made increasing inroads on the business of the union dairies, the opposition of the defendant union became more active. Its members insisted that the vendor system constituted unfair competition, depressing labor standards. To combat it, they attempted—as the District Court found from the facts—to unionize the employees and vendors of the dairies utilizing this plan. Not succeeding in this attempt, in 1934 they began picketing the so-called cut-rate stores. The picketing was carried on almost continuously until this suit was filed. Pickets usually carried placards denouncing cut-rate stores as unfair to the A. F. of L. local. During the years in which this strife continued, store windows were broken, personal altercations occurred, charges and countercharges were frequent, arrests were made and court proceedings instituted. Finally, in March, 1938 —about two months before the complaint was filed in this case —the vendors and the other employees of the plaintiff dairies organized the plaintiff union under a C.I.O. charter. Thereupon signs were placed inside the cut-rate store windows, announcing that the milk handled by the stores was processed and delivered by members of the plaintiff union. But this did not settle the long-standing controversy; the picketing continued, and this suit followed.

The petition for an injunction rests primarily upon the charge that the defendant union and its officials had entered into a conspiracy to interfere with and restrain interstate commerce in violation of the Sherman and Clayton Acts. It is contended by plaintiffs that the controversy is not a labor dispute within the meaning of the Norris-LaGuardia Act, but is an unlawful secondary boycott of which the purpose is not to unionize the vendors but to obtain for the defendants' employers a Chicago milk monopoly at a sustained high price level, contrary to the Sherman Act.

First. The complaint on its face is probably sufficient to show that a labor dispute existed.[9] We need not decide that point,

[9] Among other things, the complaint revealed that the vendors were members of the C. I. O. union which had made a contract touching on the terms and

however, for the case proceeded to final judgment. Defendants filed an answer, and the court referred plaintiffs' motion for a temporary injunction to a special master. The master conducted extensive hearings, and heard evidence offered by both sides. In his report, the master found, in the language of the Norris-LaGuardia Act, that the case arose out of and involved a labor "dispute between one or more employers or associations of employers and one or more employees or associations of employees", all of whom were engaged in the same industry, trade, craft or occupation, namely, the milk industry; that defendants had attempted for some time to unionize the employees of the plaintiff dairies and of other cut-rate dairies, and that the picketing was an effort on the part of the defendant to compel the vendors and wagon drivers of the dairies to join the defendant union for the purpose of improving working conditions and wages of vendors; that the working hours of the plaintiff dairies' employees were longer and the wage scales lower than the union standards.[10] The District Court adopted the findings of the master, and made further findings of its own.

It is not material, as the Circuit Court of Appeals thought, that defendants' attempt to unionize the vendors was upon the condition that they would cease to handle milk as "vendors" if admitted to membership in the union. There are few instances of attempted unionization in which a change to union membership would not require some alteration in the conditions or terms of employment. Union membership contemplates change—change which it is believed

conditions of employment with the plaintiff dairies, that the vendors' right of organization and collective representation for the purpose of avoiding industrial strife with the defendant union should be protected, and that the plaintiff union and the defendant union were in actual competition in obtaining employment in connection with the sale and distribution of milk in the City of Chicago.

[10] Plaintiffs complain of the form in which this last finding was made. Undoubtedly, the Master failed to use apt language in expressing his conclusions. But the language used, read in its context and in conjunction with the entire record, reveals that the objections to the finding are without foundation. What the Master said in his report was: "The Master is of the opinion that the dispute involved in the instant case brings it within the provisions of the Norris-LaGuardia Act . . . . The testimony of defendants' witnesses is to the effect that they have attempted for some time to unionize the employees of the Plaintiff Dairies and other cut-rate Dairies; that the picketing complained of herein is an effort to compel the vendors, and wagon drivers employed by the Plaintiff Dairies to join the defendant union for the purpose of improving working conditions and wages of said vendors and employees of the Plaintiff Dairies, and that the working hours and wage scale of Plaintiff Dairy's employees is lower than the union scale."

will bring about better working conditions for the employees. Moreover, the evidence offered by the plaintiffs themselves shows that membership in defendant union would have involved no substantial change in the vendors' relationship to the dairies. Truck drivers employed by dairies were eligible for membership in the defendant union, and plaintiffs' evidence showed that the "vendors" were actually regarded as employees of the plaintiff dairies. The plaintiffs offered as a part of their evidence the articles of agreement between the plaintiff union and the plaintiff dairies; each of those contracts contains the following provision: "The term 'employee', as used in this Agreement shall mean all wholesale and retail route salesmen or drivers and their helpers and assistants; all milk distributors commonly referred to as 'Vendors'; all persons employed in the sale and distribution of the Company's products; . . . ." And each agreement provided for a closed shop and gave to plaintiff union the exclusive right to represent all the dairy's employees, including the vendors, for purposes of negotiating on "all questions of wages, hours, and conditions of employment that shall prevail in the Company's business."[11]

Whether rightly or wrongly, the defendant union believed that the "vendor system" was a scheme or device utilized for the purpose of escaping the payment of union wages and the assumption of working conditions commensurate with those imposed under union standards. To say, as the Circuit Court of Appeals did, that the conflict here is not a good faith labor issue, and that therefore there is no "labor dispute", is to ignore the statutory definition of the term; to say, further, that the conditioned abandonment of the vendor system, under the circumstances, was an issue unrelated to labor's efforts to improve working conditions, is to shut one's eyes to the everyday elements of industrial strife.

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[11] On the subject of the actual status of the vendors, the president of one of the plaintiff dairies testified as follows:

"The Witness [Sigfried Weiss, president of the Lake Valley dairy]: He wants to know if they are employed by the dairy?

"Mr. Riskind [attorney for defendants] Yes, that is all I want to know.

"A. Now that is not so easy to say, if they are employed or not. We have contracts, and they are bound to our dairy. They are actually employed by our dairy, but we have the vendor system, where they own their own trucks and they pay their own expenses and they buy milk at a certain price at our dairy. In one way they are employees, and in another way, we don't pay wages. We have to pay whatever they can make over a certain price. We charge them a certain price."

Nor does the controversy cease to be a labor dispute, as the Circuit Court of Appeals thought, because the plaintiff dairies' employees became organized.[12] This merely transformed the defendants' activities from an effort to organize non-union men to a conflict which included a controversy between two unions. A controversy "concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment" is expressly included within the definition of a labor dispute in the Norris-LaGuardia Act.

The District Court not only found that a labor dispute existed, but also found that it was without jurisdiction to grant an injunction because the requirements of the Norris-LaGuardia Act had not been met. We do not understand that the Circuit Court of Appeals overturned this finding. That court said: "Again, if jurisdiction were conceded and there was a labor dispute involved, then it is quite doubtful if appellants could recover because they have not in every respect complied with the requirements of the Norris-LaGuardia Act." We agree with the District Court that this case grows out of a labor dispute. Since the requirements of the Norris-LaGuardia Act have not been met, the court did not have jurisdiction to grant an injunction unless by virtue of that phase of the bill which charged a violation of the Sherman Anti-Trust Act.

Second. The Court of Appeals concluded that the defendants' picketing activities constituted a secondary boycott in violation of the Sherman Anti-Trust Act, and that for this reason, regardless of the Norris-LaGuardia Act, the District Court had jurisdiction to grant an injunction even though the case arose out of or involved a labor dispute.[13] In this the Court was in error.

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[12] "Under these conditions we think it cannot be fairly said that there is a good faith labor issue involved between the defendant union and either the dairies' employees or the 'vendors' or the stores. Especially is this true when we consider the fact that the 'vendors' are organized as members of a well-recognized union, which with their consent is acting as their representative in matters dealing with their employers." 108 F. (2d) at 442.

[13] The Court said: "Moreover, we think it is clear from the findings and from the undisputed evidence in this case that the appellees' picketing activities constitute a secondary boycott, which is an unlawful activity, of which appellees could not avail themselves even though a labor dispute were involved. See Duplex Printing Press Company *v.* Deering, 254 U. S. 443; Meadowmoor Dairies, Inc. *v.* Milk Wagon Drivers' Union of Chicago, No. 753, 371 Ill. 377." 108 F. (2d) at 442.

No specific language of the Norris-LaGuardia Act is pointed to in support of the theory that the Act was to be inapplicable where injunctions are sought against labor unions charged with violating the Sherman Act in the course of labor disputes. On the contrary, section 1 of the Norris-LaGuardia Act provides that "No court of the United States . . . shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act." This unequivocal jurisdictional limitation is reiterated in other sections of the Act. The Norris-LaGuardia Act—considered as a whole and in its various parts—was intended drastically to curtail the equity jurisdiction of federal courts in the field of labor disputes. And this Court has said that "the legislative history of the Act demonstrates that it was the purpose of the Congress further to extend the prohibitions of the Clayton Act respecting the exercise of jurisdiction by federal courts and to obviate the results of the judicial construction of that Act."[14]

The committee reports on the Norris-LaGuardia Act reveal that many of the injunctions which were considered most objectionable by the Congress were based upon complaints charging conspiracies to violate the Sherman Anti-Trust Act. To end the granting of injunctions of this type, section 5 of the Norris-LaGuardia Act deprived federal courts of jurisdiction to issue restraining orders or injunctions "upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated . . . ." In reporting the bill, the House Judiciary Committee said: "This section is included principally because many of the objectionable injunctions have been issued under the provisions of the anti-trust laws, a necessary prerequisite for invoking the jurisdiction of which is a finding of the existence of a conspiracy or combination and without which no injunction could have been issued."[15]

The Norris-LaGuardia Act, passed in 1932, is the culmination of a bitter political, social and economic controversy extending over

[14] New Negro Alliance *v.* Sanitary Grocery Co., 303 U. S. 552, 562.
[15] H. Rep. No. 669, 72nd Cong., 1st Sess., p. 8.

half a century. Hostility to "government by injunction" had become the rallying slogan of many and varied groups. Indeed, as early as 1914 Congress had responded to a widespread public demand that the Sherman Act be amended, and had passed the Clayton Act, itself designed to limit the jurisdiction of federal courts to issue injunctions in cases involving labor disputes. But the proponents of the Norris-LaGuardia Act felt that the jurisdictional limitations of the Clayton Act had been largely nullified by judicial decision. Thus, the Senate Judiciary Committee, reporting the Norris-LaGuardia Act, said: "That there have been abuses of judicial power in granting injunctions in labor disputes is hardly open to discussion. The use of the injunction in such disputes has been growing by leaps and bounds. . . . For example, approximately 300 were issued in connection with the railway shopmen's strike of 1922, . . ."[16] And on the same subject the House Judiciary Committee said: "These are the same character of acts which Congress in section 20 of the Clayton Act of October 15, 1914, sought to restrict from the operation of injunctions, but because of the interpretations placed by the courts on this section of the Clayton Act, the restrictions as contained therein have become more or less valueless to labor, and this section is intended by more specific language to overcome the qualifying effects of the decisions of the courts in this respect."[17] As an example of the judicial interpretation of the Clayton Act which the Committee said was "responsible in part for this agitation for further legislation," the Committee referred to the cases of *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, and *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Association*, 274 U. S. 37. In these cases, the jurisdiction of the courts to grant injunctions had been upheld upon allegations and findings that the Sherman Anti-Trust Act had been violated.

Whether or not one agrees with the committees that the cited cases constituted an unduly restricted interpretation of the Clayton Act, one must agree that the committees and the Congress made abundantly clear their intention that what they regarded as the misinterpretation of the Clayton Act should not be repeated in the con-

[16] S. Rep. No. 163, 72nd Cong., 1st Sess., p. 8.
[17] H. Rep. No. 669, *supra*, pp. 7, 8.

struction of the Norris-LaGuardia Act. For us to hold, in the face of this legislation, that the federal courts have jurisdiction to grant injunctions in cases growing out of labor disputes, merely because alleged violations of the Sherman Act are involved, would run counter to the plain mandate of the Act and would reverse the declared purpose of Congress.[18] The Circuit Court of Appeals was in error; its judgment is reversed and the judgment of the District Court dismissing the bill for injunction is affirmed.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[18] For example, one of the prerequisites to any injunction under the Act is "that the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection." Concerning this, the House Judiciary Committee said: "The last provision is considered desirable, because it often happens that complainants rush into a Federal court and obtain an injunction the enforcement of which requires the court to consid . and punish acts which are and ought to be, under our system of government, cognizable in the local tribunals. Our Federal courts already are congested with cases ordinarily cognizable in the local police courts, . . ." H. Rep. No. 669, *supra*, p. 9.